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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules or amendments to or repealers of existing rules, including those by emergency or peremptory action.

The *Register* also contains Executive Orders and Proclamations issued by the Governor, notices of public information required by State statute, and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies. In addition, the *Register* contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current *Register* volume and a Sections Affected Index listing, by Title of the *Illinois Administrative Code*, each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume. Both indices are action coded and are designed to aid the public in monitoring rules.

The *Register* will serve as the update to the *Illinois Administrative Code*, a compilation of the rules of State agencies. The most recent edition of the *Code* along with the *Register* comprise the most current accounting of the State agencies' rules.

The *Illinois Register* is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, pars. 1001 et seq., as amended).

REGISTER PUBLICATION SCHEDULE 1992

Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:	Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:
Dec. 17, 1991	Dec. 24, 1991	1	Jan. 3, 1992	June 23, 1992	June 30, 1992	28	July 10, 1992
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June 16, 1992	June 23, 1992	27	July 6, 1992 (Mon)	Dec. 22, 1992	Dec. 29, 1992	2	Jan. 8, 1993

Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of Part: Meat and Poultry Inspection Act
- 2) Code Citation: 8 Ill. Adm. Code 125
- 3) Section Numbers:
 - Proposed Action:
 - 125.10 Amendment
 - 125.190 Amendment
 - 125.260 Amendment
 - 125.270 Amendment
 - 125.290 Amendment
 - 125.295 New Section
 - 125.390 Amendment
- 4) Statutory Authority: The Meat and Poultry Inspection Act (Ill. Rev. Stat. 1989, ch. 56 1/2, par. 316 and P.A. 87-165, effective January 1, 1992).
- 5) A Complete Description of the Subjects and Issues Involved:

The Authority Note and Section 125.10 are amended to add a reference to Public Act 87-165, which amended The Meat and Poultry Inspection Act, effective January 1, 1992. This change is housekeeping and alerts the public that the Act has been amended.

In Section 125.190, the amendment changes the reference to the Illinois form as the form has been revised.

In Section 125.260, a technical correction is being made. The Department had adopted the federal sections (317.21 through 317.24) when it adopted 55 FR 49826 (1990). In that federal rulemaking several sections were renumbered and new sections added; however, a change in the section numbers that have been incorporated by reference by the agency was overlooked at the time of the peremptory rulemaking. The federal sections pertain to scales, handling of failed product, jar closure requirements and packaging materials.

In Section 125.270(b), the subsection of The Meat and Poultry Inspection Act is being amended from (6) to (4), which is the proper subsection.

In Sections 125.290, 125.295, and 125.390, the amendments adopt federal rule changes that permit movement of imported meat and poultry and meat and poultry products prior to reinspection in accordance with the adopted federal rules.

- 6) Will these proposed amendments replace emergency amendments currently in effect?: No

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NOTICE OF PROPOSED AMENDMENTS

- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? None requiring prior JCAR approval in accordance with the Illinois Administrative Procedure Act.
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking has no effect on local governmental units.
- 11) Time, Place and Manner in which interested persons can comment on this proposed rulemaking:

A 45-day written comment period will be granted for receiving comments from the public. This comment period will begin on the day the notice of rulemaking appears in the Illinois Register. Comments should be sent to Judith Lozier, General Counsel, Department of Agriculture, State Fairgrounds, P.O. Box 19281, Springfield, Illinois 62794-9281.

The proposed rulemaking may have an impact on small businesses. In accordance with Sections 3.01 and 4.03 of the Illinois Administrative Procedure Act, small businesses may present their comments to the Director as outlined above.
- 12) Initial Regulatory Flexibility Analysis:
 - A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 22, 1992
 - B) Types of small businesses affected:

Meat and Poultry Slaughtering Establishments and importers of meat and poultry and meat and poultry products.
 - C) Reporting, bookkeeping or other procedures required for compliance:

Importers of meat and poultry and meat and poultry products may transport such product to an inspection point in this State prior to reinspection.

The other amendments are technical or housekeeping in nature and since we have already adopted the federal rules changes in Sections 125.290, 125.295 and 125.390, there should be no compliance requirements imposed by this rulemaking.

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NOTICE OF PROPOSED AMENDMENTS

D) Types of professional skills necessary for compliance:
Basic management and recordkeeping.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: DEPARTMENT OF AGRICULTURE
SUBCHAPTER C: MEAT AND POULTRY INSPECTION ACT

PART 125

MEAT AND POULTRY INSPECTION ACT

SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR
POULTRY INSPECTION

Section

- 125.10 Definitions
- 125.20 Incorporation by Reference of Federal Rules
- 125.30 Application for License; Approval
- 125.40 Official Number
- 125.50 Inspections; Suspension or Revocation of License
- 125.60 Administrative Hearings; Appeals
- 125.70 Assignment and Authority of Program Employees
- 125.80 Schedule of Operations; Overtime
- 125.90 Official Marks of Inspection, Devices and Certificates
- 125.100 Records and Reports
- 125.110 Exemptions
- 125.120 Disposal of Dead Animals and Poultry
- 125.130 Reportable Animal and Poultry Diseases
- 125.140 Detention; Seizure; Condemnation

SUBPART B: MEAT INSPECTION

Section

- 125.150 Livestock and Meat Products Entering Official Establishments
- 125.160 Equine and Equine Products
- 125.170 Facilities for Inspection
- 125.180 Sanitation
- 125.190 Ante-Mortem Inspection
- 125.200 Post-Mortem Inspection
- 125.210 Disposal of Diseased or Otherwise Adulterated Carcasses and Parts
- 125.220 Humane Slaughter of Animals
- 125.230 Handling and Disposal of Condemned or Other Inedible Products at Official Establishment
- 125.240 Rendering or Other Disposal of Carcasses and Parts Passed for Cooking
- 125.250 Marking Products and Their Containers
- 125.260 Labeling, Marking and Containers
- 125.270 Entry into Official Establishment; Reinspection and Preparation of Product
- 125.280 Meat Definitions and Standards of Identity or Composition
- 125.290 Transportation

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NOTICE OF PROPOSED AMENDMENTS

125.295 Imported Products
 125.300 Special Services Relating to Meat and Other Products
 125.305 Exotic Animal Inspection

SUBPART C: POULTRY INSPECTION

Section
 125.310 Application of Inspection
 125.320 Facilities for Inspection
 125.330 Sanitation
 125.340 Operating Procedures
 125.350 Ante-Mortem Inspection
 125.360 Post-Mortem Inspection; Disposition of Carcasses and Parts
 125.370 Handling and Disposal of Condemned or Inedible Products at Official Establishments
 125.380 Labeling and Containers
 125.390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements
 125.400 Definitions and Standards of Identity or Composition
 125.410 Transportation; Sale of Poultry or Poultry Products

AUTHORITY: Implementing and authorized by The Meat and Poultry Inspection Act (Ill. Rev. Stat. 1989, ch. 56 1/2, par. 301 et seq.; as amended by P.A. 87-165, effective January 1, 1992) and The Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, par. 16).

SOURCE: Adopted at 9 Ill. Reg. 1782, effective January 24, 1985; peremptory amendment at 9 Ill. Reg. 2337, effective January 28, 1985; peremptory amendment at 9 Ill. Reg. 2980, effective February 20, 1985; peremptory amendment at 9 Ill. Reg. 4856, effective April 1, 1985; peremptory amendment at 9 Ill. Reg. 9240, effective June 5, 1985; peremptory amendment at 9 Ill. Reg. 10102, effective June 13, 1985; peremptory amendment at 9 Ill. Reg. 11673, effective July 17, 1985; peremptory amendment at 9 Ill. Reg. 13748, effective August 23, 1985; peremptory amendment at 9 Ill. Reg. 15575, effective October 2, 1985; peremptory amendment at 9 Ill. Reg. 19759, effective December 5, 1985; peremptory amendment at 10 Ill. Reg. 447, effective December 23, 1985; peremptory amendment at 10 Ill. Reg. 1307, effective January 7, 1986; peremptory amendment at 10 Ill. Reg. 3318, effective January 24, 1986; peremptory amendment at 10 Ill. Reg. 3880, effective February 7, 1986; peremptory amendment at 10 Ill. Reg. 11478, effective June 25, 1986; peremptory amendment at 10 Ill. Reg. 14858, effective August 22, 1986; peremptory amendment at 10 Ill. Reg. 15305, effective September 10, 1986; peremptory amendment at 10 Ill. Reg. 16743, effective September 19, 1986; peremptory amendment at 10 Ill. Reg. 18203, effective October 15, 1986; peremptory amendment at 10 Ill.

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Reg. 19818, effective November 12, 1986; peremptory amendment at 11 Ill. Reg. 1696, effective January 5, 1987; peremptory amendment at 11 Ill. Reg. 2930, effective January 23, 1987; peremptory amendment at 11 Ill. Reg. 9645, effective April 29, 1987; peremptory amendment at 11 Ill. Reg. 10321, effective May 15, 1987; peremptory amendment at 11 Ill. Reg. 11184, effective June 5, 1987; peremptory amendment at 11 Ill. Reg. 14830, effective August 25, 1987; peremptory amendment at 11 Ill. Reg. 18799, effective November 3, 1987; peremptory amendment at 11 Ill. Reg. 19805, effective November 19, 1987; peremptory amendment at 12 Ill. Reg. 2154, effective January 6, 1988; amended at 12 Ill. Reg. 3417, effective January 22, 1988; peremptory amendment at 12 Ill. Reg. 4879, effective February 25, 1988; peremptory amendment at 12 Ill. Reg. 6313, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 6819, effective March 29, 1988; peremptory amendment at 12 Ill. Reg. 13621, effective August 8, 1988; peremptory amendment at 12 Ill. Reg. 19116, effective November 1, 1988; peremptory amendment at 12 Ill. Reg. 20894, effective December 21, 1988; peremptory amendment at 13 Ill. Reg. 228, effective January 11, 1989; peremptory amendment at 13 Ill. Reg. 2160, effective February 13, 1989; amended at 13 Ill. Reg. 3696, effective March 13, 1989; peremptory amendment at 13 Ill. Reg. 15853, effective October 5, 1989; peremptory amendment at 13 Ill. Reg. 16838, effective October 11, 1989; peremptory amendment at 13 Ill. Reg. 17495, effective January 18, 1990; amended at 14 Ill. Reg. 3424, effective February 26, 1990; peremptory amendment at 14 Ill. Reg. 4953, effective March 23, 1990; peremptory amendment at 14 Ill. Reg. 11401, effective July 6, 1990; peremptory amendment at 14 Ill. Reg. 13355, effective August 20, 1990; peremptory amendment at 14 Ill. Reg. 16064, effective September 24, 1990; peremptory amendment at 14 Ill. Reg. 21060, effective May 29, 1991; peremptory amendment at 15 Ill. Reg. 620, effective January 2, 1991; peremptory amendment withdrawn at 15 Ill. Reg. 1574, effective January 2, 1991; peremptory amendment at 15 Ill. Reg. 3117, effective September 3, 1991; peremptory amendment at 15 Ill. Reg. 8714, effective May 29, 1991; amended at 15 Ill. Reg. 8801, effective June 7, 1991; peremptory amendment at 15 Ill. Reg. 13976, effective September 20, 1991; peremptory amendment at 16 Ill. Reg. 1899, effective January 31, 1992; amended at 16 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR POULTRY INSPECTION

Section 125.10 Definitions

- a) Terms shall be as defined in 9 CFR 301, 303.1(d)(2), (ii), (iii) (a), (b), (d), (e) and (f), (iv), (v) and (vi), 381.1, 381.10(d)(2), (ii), (iii)(a), (b), (d), (iv), (v)

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313 shall be interpreted as references to Sections 125.90 and 125.220 respectively. References to the Humane Methods and Slaughter Act of 1978 shall mean as set forth in Section 125.220.

and (vi), and 352.1(b) through (t) (1990), unless they are otherwise defined in The Meat and Poultry Inspection Act (Ill. Rev. Stat. 1989, ch. 56 1/2, par. 301 et seq., as amended by P.A. 87-165, effective January 1, 1992) or in this Section as follows:

(Source: Amended at 16 Ill. Reg. _____, effective _____)

"Act" means The Meat and Poultry Inspection Act (Ill. Rev. Stat. 1989, ch. 56 1/2, par. 301 et seq., as amended by P.A. 87-165, effective January 1, 1992).

Section 125.190 Ante-Mortem Inspection

a) The Department incorporates by reference 9 CFR 309.1 through 309.4(a), 309.5 through 309.11, and 309.13 through 309.18 (1990; 55 FR 7472, effective May 31, 1990).

"Approved veterinarian" means any person who has graduated from a veterinary college that is recognized by the American Veterinary Medical Association.

b) In cases of emergency slaughter (see 9 CFR 311.27) and where the inspector cannot be contacted or is unable to return to the establishment, the owner of the animal shall obtain the services of a licensed veterinarian who shall perform an ante-mortem examination on the animal. If upon examination the animal shows no symptoms of disease or abnormal conditions that would prohibit its intended use as human food in accordance with the provisions of this Section, the veterinarian shall prepare a written statement to the effect that the animal is in compliance with ante-mortem requirements of this Section and can be slaughtered at the official establishment. The veterinarian's statement shall be kept on file by the official establishment in accordance with Section 125.100. The costs of the veterinary services shall be borne by the owner of the animal.

"Birds" shall mean poultry as defined in Section 2.7 of the Act.

"Condition" means any condition, including, but not being limited to, the state of preservation, cleanliness, or soundness of any product made from rabbits or the processing, handling, or packaging which may affect the wholesomeness of such product.

"Livestock" means cattle, sheep, swine, buffalo, catalo, cattalo, domestic deer, domestic elk, domestic antelope, domestic reindeer, water buffalo, and goats.

"Members of the household" means those persons who occupy a single family unit.

b) With regard to the definitions of consumer and similar type establishment, the Director has not designated any other type of establishment or institution under these terms other than those specifically stated in the incorporated language.

c) With regard to the definitions of retail store, only those sections which are incorporated by reference as stated in Section 125.10(a) shall be included in the definition. References within the incorporated language to the section of the federal rules pertaining to operations of types traditionally and usually conducted at retail stores and restaurants refer to the operations defined in Section 5(A) of the Act. No product exempted from inspection in accordance with Section 5 of the Act shall be prepared in any retail store, restaurant or similar retail-type establishment.

d) References in the incorporated language to 9 CFR 312 and

c) The Department shall approve treatment programs for diseased animals providing the licensee provides the necessary holding pens where such animals can be kept apart from the other livestock awaiting slaughter and the owner of the animal(s) agrees to the treatment and assumes the cost of such treatment. Following treatment, the animal shall be released from slaughter at the request of the owner or of the official establishment and permitted to be transported from the establishment provided the animal was not infected with a reportable disease (see Section 125.130).

d) An animal found in a comatose or semicomatose condition shall be set apart from the other livestock and held for further observation at the request of the owner or the official establishment.

e) "Other responsible official supervision" shall mean under

DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENTS

the supervision of a licensed veterinarian or a program employee of the U.S. Department of Agriculture.

- f) At the option of the owner of the animal, any animal identified as a suspect may be reinspected by a veterinarian as set forth in Section 9 of the Act or the animal shall be slaughtered and identified in accordance with the provisions of this Section.

- g) An animal will be withheld from slaughter to permit biological residues to be reduced in accordance with 9 CFR 309.16 when the owner informs the inspector that the animal was taking chemicals or biologics or there is evidence to suggest that the animal was taking chemicals or biologics (e.g., injection marks, chemical odor). The time period for holding such animal shall depend on the withdrawal period of the chemical or biologic that was administered the animal. The inspector shall permit the slaughter of such animal (see 9 CFR 309.16a) when requested by the official establishment or by the owner of the animal.

- h) The inspector shall approve the use by any establishment of any skin tattoo that contains a number identifying the animal or lot. The identifying number for the skin tattoo shall be assigned by the inspector.

- i) Reference to federal form MP-402-2 shall mean Illinois form V-3 v-2. References in the incorporated language to 9 CFR 314 shall be interpreted to mean in accordance with Section 125.230.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 125.260 Labeling, Marking and Containers

- a) The Department incorporates by reference 9 CFR 317.1 through 317.2(j)(10), 317.2(j)(12) through 317.4(d)(1), 317.5 through 317.6, 317.8, 317.10 through 317.14, 317.17 through 317.24 ~~317-20(d)~~ (1990; 55 FR 7289, effective August 28, 1990; 55 FR 34678, effective September 24, 1990; 55 FR 49826 and 50081, effective May 29, 1991; 56 FR 1359, effective September 3, 1991; 56 FR 22638, effective January 2, 1992; 56 FR 41445, effective September 20, 1991).

- b) The Department shall approve only those abbreviations for marks of inspection as specifically stated in Section

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2.26(j)(3) and (k)(3), (4), (5) and (9) of the Act.

- c) Labeling and sketch labeling shall be approved by the Department if the label is in compliance with the provisions of this Section and the label is not misbranded in accordance with Section 2.20 of the Act. All labels and sketch labels shall be submitted to the Springfield office of the Department for approval.

- d) The Department shall approve temporary labeling as stated in 9 CFR 317.4(d)(1). Labeling which has received temporary approval shall not be used beyond the temporary approval period unless the printer or manufacturer of the label is unable to provide the official establishment with the labels before the expiration of the temporary approval.

- e) The quantity of contents as shown on the label shall be in compliance with the Weights and Measures Act (Ill. Rev. Stat. 1989, ch. 147, par. 101 et seq.) and the rules adopted thereto (8 Ill. Adm. Code 600.120).

- f) The Department does not approve terms for generic labeling and considers the approval of terms as generic to be the responsibility of the federal government.

- g) With regard to the incorporated language in 9 CFR 317.6, the extension of time for exhausting existing stocks of labels is not applicable since all labels presently in use are in compliance with the rules of this Part.

- h) The Department does not issue a list of approved packaging materials and will permit for use any packaging material which has been approved by the U.S. Department of Agriculture (see 49 FR 2235, effective July 17, 1984).

- i) Labels to be used for the relabeling of inspected and passed product shall be permitted to leave the official establishment when the product must be relabeled because the original labels have become mutilated or damaged. The official establishment shall reimburse the Department for any overtime costs, if applicable, involved for the inspector to supervise the relabeling of a product. The overtime charges shall be as set forth in Section 125.80.

- j) The inspector shall grant authorization to transport labels, wrappers and containers bearing official marks from one official establishment to another official establishment provided the official establishment provides

DEPARTMENT OF AGRICULTURE

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to the inspector the information required in 9 CFR 317.13 so that the inspector can notify the inspector at the destination point.

- k) Labeling of custom slaughter and/or custom processed meat and/or meat products and the containers containing custom slaughtered and/or custom processed meat and/or meat products shall be as set forth in Section 5 of the Act.

- l) References in the incorporated language to 9 CFR 312 shall be interpreted to mean in accordance with Section 125.90.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 125.270 Entry into Official Establishment; Reinspection and Preparation of Product

- a) The Department incorporates by reference 9 CFR 318.1(c) through 318.7, 318.9 through 318.10, 318.14 through 318.20, 318.22, 318.300 through 318.311 (1990; 54 FR 43041, effective January 18, 1990; 55 FR 7294, effective August 28, 1990; 55 FR 34678, effective September 24, 1990, as amended by 55 FR 49991, December 4, 1990).

- b) No meat or meat product shall be brought into an official establishment unless it is inspected or has been prepared in an official establishment or in a federally licensed establishment and is identified by an official inspection legend as set forth in Section 125.90, a federal inspection legend, or is exempt from inspection as stated in Section 125.110. Meat and meat products received in an official establishment during the absence of the inspector shall be identified as set forth in Section 125.200 and, unless exempt from inspection, shall not be used or prepared until they have been reinspected. Any meat and meat product originally prepared at any official establishment may not be returned to any part of such establishment other than the receiving area until it has been reinspected by the inspector and passed. Wild game carcasses shall comply with Section 5(B)(4) ~~(6)~~ of the Act. The official establishment shall maintain an inventory of non-meat items (e.g., spices, preservatives) which are received at the official establishment. Any product that is brought on the premises of an official establishment contrary to the provisions of this Section shall be removed immediately from such establishment by the operator of the establishment.

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NOTICE OF PROPOSED AMENDMENTS

- c) Reinspections of meat and/or meat products within the official establishment shall be performed through the use of a random digit table.

- d) Docks and receiving rooms for meat and/or meat products or other articles used by the establishment in the preparation of meat products entering an official establishment shall be approved by the inspector if the location of such docks or receiving rooms will not permit such product or article to pass through rooms containing inspected and passed products.

- e) The manner of defrosting frozen products and methods of treating to preserve products shall be in accordance with procedures as set forth in the "Meat and Poultry Inspection Manual" as adopted in Section 125.20.

- f) Casings or weasand shall be inspected and passed if it is in compliance with the specific provisions as stated in 9 CFR 318.5(i) for passage of such articles.

- g) The Department does not approve new substances to be used on meat or in meat products, their uses or the levels of use of an approved substance. Such substances will be permitted to be used and artificial flavorings may be used if they do not adulterate the meat and/or meat product in accordance with Section 2.11 of the Act and are in compliance with the provisions of this Section.

- h) References to exemptions from slaughter and custom slaughter shall mean those exemptions set forth in Section 125.110.

- i) Reference to 9 CFR 327 are not applicable to the Department in its enforcement of the rules of this Part. References to the federal Poultry Inspection Act, Section 403 of the Act, Section 7 of the Act, 9 CFR 303, and paragraph 23(a) of the Act shall be interpreted to mean in accordance with The Meat and Poultry Inspection Act and the rules of this Part.

- j) The Department does not approve thermometers for use in smokehouses, dry rooms and other compartments that are used in the treatment of pork.

- k) Disinfectants shall be those as set forth in Section 125.180.

- l) Adequate vacuum shall be determined through the use of

DEPARTMENT OF AGRICULTURE

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vacuum gauges.

- m) Canned products which may be processed without steam-pressure cooking shall be those products as stated in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- n) The inspector shall permit lots of canned product to be shipped from the official establishment prior to the completion of the incubation period on the representative samples in accordance with the specific provisions in 9 CFR 318.309.
- o) The standards and procedures for determining when ingredients of finished products are in compliance with this Section shall be as set forth in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 125.290 Transportation

- a) The Department incorporates by reference 9 CFR 325.1(a) through 325.1(b)(2), 325.1(c) through 325.2, 325.5 through 325.8(b), 325.10, 325.13, 325.14 through 325.19 (1990); 56 FR 55179, effective January 15, 1992.
- b) Transportation of products which have become adulterated or misbranded from an official establishment shall be in sealed containers or sealed trucks.
- c) Proprietary substances shall be those as stated in the "List of Proprietary and Nonfood Compounds" as adopted by the Department in Section 125.20.
- d) Specimens of product for laboratory examination, research or for other nonhuman food purposes (e.g., educational training) shall be in compliance with Section 125.230.
- e) References in the incorporated language to 9 CFR 312, 320 and 314 shall be interpreted to mean in accordance with Sections 125.90, 125.100 and 125.230 respectively.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 125.295 Imported Products

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The Department incorporates by reference 9 CFR 327.7 (1990); 56 FR 65179, effective January 15, 1992.

(Source: Added at 16 Ill. Reg. _____, effective _____)

SUBPART C: POULTRY INSPECTION

Section 125.390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements

- a) The Department incorporates by reference 9 CFR 381.145(b) through 381.148, 381.150 through 381.151, 381.200, 381.300 through 381.311 (1990); 55 FR 5976, effective March 23, 1990; 55 FR 23070, effective July 6, 1990; 56 FR 65179, effective January 15, 1992).
- b) No poultry or poultry product shall be brought into an official establishment unless it is inspected or has been prepared in an official establishment or in a federally licensed establishment and is identified by an official inspection legend as set forth in Section 125.90, the federal inspection legend, or is exempt from inspection as stated in Section 125.110. However, poultry or poultry products imported into the United States may be transported to an inspection site in accordance with the provisions of 9 CFR 381.200 for reinspection.

- c) Poultry and poultry products received in an official establishment during the absence of the inspector shall be identified as set forth in Section 125.360 and, unless exempt from inspection, shall not be used or prepared until they have been reinspected. Any poultry and/or poultry product originally prepared at any official establishment may not be returned to any part of such establishment other than the receiving area until it has been reinspected and passed by the inspector.

- d) The official establishment shall maintain an inventory of non-poultry items (e.g., spices, preservatives) which are received at the official establishment. Any product that is brought on the premises of an official establishment contrary to the provisions of this Section shall be removed immediately from such establishment by the operator of the establishment.

- e) Reinspections of poultry and/or poultry products within the official establishment shall be performed through the

DEPARTMENT OF AGRICULTURE

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- e) Reinspections of poultry and/or poultry products within the official establishment shall be performed through the use of a random digit table.
- f) Poultry feet shall be approved for processing for human food in accordance with the procedures set forth in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- g) The Department does not approve new substances to be used on poultry or in poultry products, their uses or the levels of use of an approved substance. Such substances will be permitted to be used if they will not adulterate the poultry and/or poultry product in accordance with Section 2.11 of the Act and are in compliance with the provisions of this Section.
- h) Ready-to-heat-and-eat poultry or stuffed ready-to-roast poultry may be moved from an official establishment prior to freezing in accordance with the provisions of Section 125.330 (specifically the incorporated language in 9 CFR 381.66(f)(3)).
- i) Any method of cleaning immediate containers used for the holding of poultry and poultry products shall be approved if such method is in compliance with the sanitation requirements (see Section 125.330).
- j) Canned poultry products which may be processed without steam-pressure cooking shall be those products as stated in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- k) The inspector shall permit lots of canned poultry products to be shipped from the official establishment prior to the completion of the incubation period on the representative samples in accordance with the specific provisions in 9 CFR 381.309.
- l) Disinfectants which may be used in an official establishment shall be those products on the "List of Proprietary Substances and Nonfood Compounds" as adopted by the Department in Section 125.20.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Rules of Practice
- 2) Code Citation: 83 Ill. Adm. Code 200
- 3) Section Numbers: 200.715
Proposed Action: New Section
- 4) Statutory Authority: Implementing and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 10-101, Section 18c-1202 of the Illinois Commercial Transportation Law (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 18c-1202), Section 18a-200 of the Illinois Commercial Relocation of Trespassing Vehicles Law (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 18a-200), Section 10 of the Electric Supplier Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 410, and authorized by Section 10-5, 10-10 and 10-15 of the Illinois Administrative Procedure Act (Public Act 87-823, effective July 1, 1992).
- 5) A Complete Description of the Subjects and Issues Involved: P.A. 87-823 amends the Illinois Administrative Procedure Act ("IAPA"), effective July 1, 1992. One of the amendments to the IAPA is the addition of Section 10-15, which will establish the preponderance of the evidence as the standard of proof in any contested case hearing conducted under the IAPA, unless otherwise provided by law or stated in an agency's rules. New Section 10-10 of the IAPA allows agencies to establish the standard of proof used in contested cases. This amendment will retain the current standard of proof used in contested cases under the laws which affect public utilities.
- 6) Will this proposed amendment replace an emergency amendment currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date: No.
- 8) Does this proposed amendment contain incorporations by reference? No.
- 9) Are there any other proposed amendments pending on this Part? No.
- 10) Statement of Statewide Policy Objectives: The amendment neither creates nor expands any state mandate on units of local government, school districts, or community college districts.

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENT

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Any person who plans to submit comments should file a notice of intent thereof, within 21 days of the date of this issue of the Illinois Register with:

Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62706

Comments should be filed with the Chief Clerk within 45 days of the date of this issue of the Illinois Register.

12) Initial Regulatory Flexibility Analysis:

A) Date amendment was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 28, 1992

B) Types of small businesses affected: This amendment will affect those entities regulated by the Commission that are also small businesses as defined in the Illinois Administrative Procedure Act.

C) Reporting, bookkeeping or other procedures required for compliance: None.

D) Types of professional skills necessary for compliance: Legal skills.

The full text of the Proposed Amendment begins on the next page:

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENT

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF UTILITY

PART 200
RULES OF PRACTICE

SUBPART A: GENERAL PROVISIONS

Section
200.10
200.20
200.25
200.30
200.40
200.50
200.60
200.70
200.80
200.90
200.95

Procedure Governed
Construction of This Part
Standards for Discretion
Deviation from This Part
Definitions
Office
Open Meetings
Communications to the Commission
Computation of Time
Appearances
Class Actions Prohibited

SUBPART B: FORM, FILING AND SERVICE OF PLEADINGS

Section
200.100
200.110
200.120
200.130
200.140
200.150
200.160
200.170
200.180
200.190
200.200
200.210

Contents of Pleadings
Forms of Pleadings
Copies of Pleadings
Signature and Verification
Amendments
Service
Informal Complaints
Formal Complaints
Answers
Motions
Intervention
Petition for Rulemaking

SUBPART C: PREHEARING PROCEDURE AND DISCOVERY

Section
200.300
200.320
200.330
200.335

Prehearing Conferences
Facts Disclosed Privileged
Recordation and Order
Application of Discovery Rules Contained in Sections 200.340 through 200.430

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENT

200.340 Policy on Discovery
 200.350 Reasonable Attempts to Resolve Differences Required
 200.360 Depositions and Other Discovery Procedures
 200.370 Supervision of Discovery
 200.380 Subpoena
 200.390 Motion to Quash Subpoena
 200.400 Service and Fees Payable
 200.410 Time Limits on Discovery
 200.420 Failure to Comply With a Discovery Order or a Subpoena
 200.430 Protective Orders

SUBPART D: HEARING PROCEDURE

Section
 200.500 Authority of Hearing Examiner
 200.505 Recessing Hearing For Conference or Discussion
 200.510 Disqualification of Hearing Examiner
 200.520 Interlocutory Review of Hearing Examiner's Ruling
 200.530 Notice, Time and Place of Hearings
 200.540 Recording Appearances at Hearings
 200.550 Failure to Appear or to Exercise Diligence in Proceeding
 200.560 Continuances
 200.570 Order of Procedure and Receiving Evidence
 200.580 Transcripts
 200.590 Conduct at Hearings
 200.600 Consolidation and Severance
 200.610 Evidence

200.620 Testimony to be Under Oath or Affirmation
 200.625 Examination of Adverse Party or Agent
 200.630 Stipulation of Facts
 200.640 Administrative Notice
 200.650 Records of Other Proceedings
 200.660 Prepared Testimony
 200.670 Exhibits
 200.680 Objections
 200.690 Offer of Proof
 200.700 Record in Commission Proceedings
 200.710 Ex Parte Communications
 200.715 Standard of Proof

SUBPART E: POST-HEARING PROCEDURE

Section
 200.280 Briefs
 200.810 Draft Orders
 200.820 Hearing Examiner's Proposed Order
 200.830 Exceptions; Reply
 200.840 Filing of Briefs

ILLINOIS COMMERCE COMMISSION

NOTICE OF PROPOSED AMENDMENT

200.850 Oral Argument
 200.860 Commission Order
 200.870 Additional Hearings
 200.880 Rehearing
 200.890 Appeals
 200.900 Reopening on Motion of the Commission

AUTHORITY: Implementing and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 10-101), Section 18c-1202 of the Illinois Commercial Transportation Law (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 18c-1202), Section 18a-200 of the Illinois Commercial Relocation of Trespassing Vehicles Law (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 18a-200), Section 10 of the Electric Supplier Act (Ill. Rev. Stat. 1989, ch. 111 2/3, par. 410), and Sections 10-5, 10-10 and 10-15 of the Illinois Administrative Procedure Act (Public Act 87-823, effective July 1, 1992).

SOURCE: Filed and effective January 15, 1960; codified at 8 Ill. Reg. 18459; old rules repealed and new Part adopted at 9 Ill. Reg. 5627, effective April 15, 1985; emergency amendments at 10 Ill. Reg. 1277, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 10481, effective May 30, 1986; amended at Ill. Reg. , effective .

NOTE: Statutory language is denoted by capital letters.

Section 200.715 Standard of Proof

In proceedings conducted under statutes other than the ICTL and the Illinois Commercial Relocation of Trespassing Motor Vehicles Law, the Commission shall make findings supported by substantial evidence. The Commission rejects the standard of proof of the preponderance of the evidence, which would otherwise apply under Section 10-15 of the Illinois Administrative Procedure Act, in proceedings conducted under statutes other than the ICTL or the Illinois Commercial Relocation of Trespassing Motor Vehicles Law.

(Source: Added at Ill. Reg. , effective)

DEPARTMENT OF CORRECTIONS
NOTICE OF PROPOSED AMENDMENTS1) Heading of the Part: VOLUNTEER SERVICES2) Code Citation: 20 Ill. Adm. Code 4353) Section Numbers: Proposed Action:

435.10	Amend
435.12	Add
435.15	Amend
435.20	Amend
435.30	Amend
435.40	Amend
435.50	Amend
435.60	Amend
435.70	Add

4) Statutory Authority: Implementing Section 3-2-2 and authorized by Section 3-7-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1989, ch. 38, pars. 1003-2-2 and 1003-7-1).

5) A Complete Description of the Subjects and Issues Involved: The rulemaking is being expanded to apply to all facilities of the Department. Definitions have been added and the rules have been further clarified. The application and screening process and requirements for volunteers have been more clearly stated for potential volunteers. While the Department retains the authority to require separate applications when services will be provided at more than one departmental facility, separate applications are no longer mandated in each instance.

6) Will this proposed rule replace an emergency rule currently in effect?
No.

7) Does this rulemaking contain an automatic repeal date? Yes
X No

8) Does this proposed amendment contain incorporation by reference? No.

9) Are there any other proposed amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: Not applicable; this rulemaking does not create or expand any State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

DEPARTMENT OF CORRECTIONS
NOTICE OF PROPOSED AMENDMENTS

William H. Craine, Ph.D., Deputy Director
Illinois Department of Corrections
1301 Concordia Court
P. O. Box 19277
Springfield, Illinois 62794-9277

All written comments received within 45 days of the date of this publication will be considered.

12) Initial Regulatory Flexibility Analysis: Not required; this rulemaking does not affect small businesses.

The full text of the Proposed Amendments begins on the next page:

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER I: DEPARTMENT OF CORRECTIONS
SUBCHAPTER d: PROGRAMS AND SERVICES

PART 435
VOLUNTEER SERVICES

Section 435.10	Applicability
435.12	Definitions
435.15	Responsibilities
435.20	Designation of Staff Coordinator
435.30	Application for Volunteer Service: Individuals
435.40	Application for Volunteer Service: Groups
435.50	Placement Procedures for Approved Volunteers
435.60	Conduct of Volunteers
435.70	Termination of Volunteer Services

AUTHORITY: Implementing Section 3-2-2 and authorized by Section 3-7-1 of the Unified Code of Corrections (Ill. Rev. Stat. 1989, ch. 38, pars. 1003-2-2 and 1003-7-1).

SOURCE: Adopted at 8 Ill. Reg. 14644, effective August 1, 1984; amended at 11 Ill. Reg. 11523, effective July 1, 1987; amended at 16 Ill. Reg. _____, effective _____.

Section 435.10 Applicability

This Part applies to any group or individual who is seeking to provide or is providing volunteer services within the Adult-Juvenile-or-Community Services-Divisions of the Department of Corrections (Department).

(Source: Amended at 16 Ill. Reg. _____, effective _____.)

Section 435.12 Definitions

"Chief Administrative Officer" means the highest ranking official of a correctional facility or the Deputy Director of any other Department facility.

"Correctional facility" means a correctional center, youth center, or community correctional center within the Department.

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Facility" means any correctional facility, program, or office within the Department.

"Volunteer Services Coordinator" means the staff member responsible for coordinating volunteer services for the facility.

(Source: Added at 16 Ill. Reg. _____, effective _____.)

Section 435.15 Responsibilities

a) Unless otherwise specified, the Director, or Chief Administrative Officer, or Volunteer Services Coordinator may delegate responsibilities stated in this Part to another person or persons or designate another person or persons to perform the duties specified.

b) No other individual may routinely perform duties whenever a Section in this Part specifically states the Director, or Chief Administrative Officer, or Volunteer Services Coordinator shall personally perform the duties. However, the Director, or Chief Administrative Officer, or Volunteer Services Coordinator may designate another person or persons to perform the duties during periods of his temporary absence or in an emergency.

(Source: Amended at 16 Ill. Reg. _____, effective _____.)

Section 435.20 Designation of Staff Coordinator

The Chief Administrative Officer of each correctional facility which accepts volunteers shall designate a Volunteer Services Coordinator.

(Source: Amended at 16 Ill. Reg. _____, effective _____.)

Section 435.30 Applications for Volunteer Service: Individuals

a) Applicants for volunteer service shall be required to complete an application provided by the Department and to supply references and verification of qualifications. Additional Applicants shall be subject to screening procedures, including drug testing, and selection criteria may be adopted by the facility to address security concerns or program requirements.

b) An ex-offender shall not be accepted for volunteer service except as approved by the Chief Administrative Officer and the Director. In making their decision, the Chief Administrative Officer and the Director shall consider matters such as the ex-offender's criminal history, his behavioral history with the Department, and his any

DEPARTMENT OF CORRECTIONS

NOTICE OF PROPOSED AMENDMENTS

other prior involvement with the Department facility or facilities --- where volunteer service is to be provided.

- c) Applicants wishing shall be required to notify each facility for which they wish to provide volunteer service to more than one facility shall and may be required to submit separate volunteer applications to each; facility and to undergo screening and orientation by the respective facilities. The determination whether or not to require separate applications or screening shall be based, among other matters, on the type of program and safety and security of the facility.

- d) Criteria for selection, rejection, and retention of volunteers may vary according to program and security needs of the facility or service.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 435.40 Applications for Volunteer Service: Groups

- a) Citizen groups wishing to provide volunteer service to a correctional facility or to committed persons in the community shall submit a written statement in advance, detailing: the purpose and goals of the proposed program; i the intended frequency of visits to the facility or with committed persons; and ; if applicable, the identity of the target group of committed persons to whom the service would be directed.

- 1) Citizen groups proposing to provide such services to the facility on a continuing basis shall be required to submit a completed application for each participant and any subsequently added participants. Screening of individual members of the group shall be performed as required for individual volunteer applicants (Section 435.30).

- 2) Citizen groups proposing to provide such services on an occasional or one-time-only basis, such as church choirs, athletic teams, or visiting entertainers, shall be required to identify participants by name and may be required to provide the date of birth and social security number of each participant. Any member of the group who is an ex-offender must be identified. Names and other required information shall be supplied in advance of the each visitation in accordance with requirements of the facility.

- b) Citizen groups wishing to provide other volunteer services to a non-institutional program or service shall submit a written statement detailing the purpose and goals of the proposed service and

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suggested procedures for delivery of service. Screening of individual members of the group shall be performed as required for individual volunteer applicants (Section 435.30).

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 435.50 Placement Procedures for Approved Volunteers

This Section applies to applicants who will be providing volunteer services on a continuing basis.

- a) Upon completion of the screening process, approved applicants shall be notified of their acceptance by the Volunteer Services Coordinator.

- b) Prior to placement, the volunteer:

- 1) Shall be informed of and shall agree in writing to observe all applicable rules and to serve as a volunteer at the sole discretion of the Department;
- 2) Shall sign a waiver releasing the Department and its agents or employees from liability for injuries or damages which might result in connection with his the volunteer activities, except for those claims which may arise due to the willful and wanton conduct of the Department or its authorized agents or employees;

- 3) Shall sign a written volunteer job description; and

- 4) Shall receive training and orientation appropriate to the volunteer assignment as required by the facility. Written documentation, signed and dated by the volunteer, shall be maintained to verify training and orientation received.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 435.60 Conduct of Volunteers

Volunteers shall conduct themselves in accordance with the rules of the Department and the facility or service.

- a) Volunteer services may be terminated, among other matters, for any infraction of a rule or failure to respond to supervision;--

- b) Volunteers or volunteer groups who have been dismissed shall surrender any identification issued, and staff shall be notified of the action taken.

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NOTICE OF PROPOSED AMENDMENTS

- e) Any individual or volunteer group whose conduct has resulted in dismissal from one facility or service shall be restricted from participation in volunteer activities at all other facilities or services. -- Reinstatement of the volunteer or volunteer group shall be subject to approval of the Director.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 435.70 Termination of Volunteer Services

- a) Volunteer services may be terminated at any time.
- b) Volunteers or volunteer groups who have been dismissed shall surrender any form of identification issued by the Department; and staff shall be notified of the action taken.
- c) Any individual or volunteer group whose conduct has resulted in dismissal from one facility shall be restricted from participation in volunteer activities at all other departmental facilities. Reinstatement of the volunteer or volunteer group shall be subject to approval of the Director.

(Source: Added at 16 Ill. Reg. _____, effective _____)

CRIMINAL JUSTICE INFORMATION AUTHORITY

NOTICE OF PROPOSED RULES

- 1) **Heading of the Part:** Americans With Disabilities Act Grievance Procedure
- 2) **Code Citation:** 20 Ill. Adm. Code 1580
- | Section Numbers: | Proposed Action |
|------------------|-----------------|
| 1580.10 | New Section |
| 1580.20 | New Section |
| 1580.30 | New Section |
| 1580.40 | New Section |
| 1580.50 | New Section |
- 4) **Statutory Authority:** Americans With Disabilities Act of 1990 (42 USC 12101 et seq.); Section 35.107 of the Title II regulations, 28 CFR Part 35; Sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 USC 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9); Section 505 of the Rehabilitation Act of 1973 (29 USC 794a); and Section 7 of the Illinois Criminal Justice Information Act (Ill. Rev. Stat. Ch. 38, pars. 210-7(o) and (r)).
- 5) **A complete description of the subjects and issues involved:** These rules establish the formalized method by which qualified persons with disabilities who are protected against discrimination by federal and state laws may file a complaint of alleged violation by the Illinois Criminal Justice Information Authority (Authority) with the Authority and by which such claims will be investigated and resolved by the Authority.
- 6) **Will this proposed rulemaking replace an emergency rule currently in effect?** No
- 7) **Does this rulemaking contain an automatic repeal date?** No
- 8) **Do these proposed rules contain incorporations by reference?** No
- 9) **Are there any other amendments pending on this part?** No
- 10) **Statement of Statewide Policy Objectives:** These rules will not create or expand a state mandate.

CRIMINAL JUSTICE INFORMATION AUTHORITY

NOTICE OF PROPOSED RULES

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested person may submit written comments or arguments concerning these proposed rules. Written submissions shall be filed with:

Ms. Jan Oncken
EEO Officer
Illinois Criminal Justice Information Authority
120 S. Riverside Plaza
Chicago, IL. 60606-3997
Telefax: (312) 793-8422
TDD: (312) 793-4170

12) Initial Regulatory Flexibility Analysis:

These proposed rules do not affect small businesses.

The full text of the Proposed Rules begins on the next page:

CRIMINAL JUSTICE INFORMATION AUTHORITY

NOTICE OF PROPOSED RULES

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
CHAPTER III: ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY

PART 1580
AMERICANS WITH DISABILITIES
ACT GRIEVANCE PROCEDURE

Section	Purpose
1580.10	Procedures
1580.20	Investigation Findings
1580.30	Final Level
1580.40	Accessibility
1580.50	

AUTHORITY: Implementing and authorized by the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.); Section 35.107 of the Title II regulations, 28 CFR Part 35; Sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 USC 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9); Section 505 of the Rehabilitation Act of 1973 (29 USC 794a); and Section 7 of the Illinois Criminal Justice Information Act (Ill. Rev. Stat. Ch. 38, pars. 210-7(o) and (r)).

SOURCE: Adopted at ___ Ill. Reg. ___, effective ___, 1992.

Section 1580.10 Purpose

The purpose of the Illinois Criminal Justice Information Authority's discrimination complaint procedure is to establish a formalized method whereby discrimination complaints by qualified individuals with disabilities can be detected at the beginning stages, investigated, and, hopefully, resolved.

To that end, Illinois Criminal Justice Information Authority (Authority) supervisors and managers are responsible for the resolution of valid complaints of discrimination within their organizational level. The Authority's Equal Employment Opportunity (EEO) Officer shall be responsible for the investigation of complaints, documentation of facts, and presentation of findings, and for advising management regarding recommendations to resolve the dispute.

CRIMINAL JUSTICE INFORMATION AUTHORITY

NOTICE OF PROPOSED RULES

It is the intention of the Authority to foster open communication with all individuals requesting readily accessible programs, services and activities. The Authority requires that each program, service and activity offered, when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities and encourages Authority supervisors of agency programs, services and activities to respond to requests for reasonable accommodations before they become discrimination complaints.

The use of this discrimination complaint procedure does not preclude the right of an employee, applicant or member of the public to file a charge directly with the Illinois Department of Human Rights or the United States Equal Employment Opportunity Commission (EEOC). The filing of any complaint of alleged discrimination may not be used as a basis for future retaliation adversely affecting the rights of any employee, applicant or member of the public.

Section 1580.20 Procedures

a) General. The Authority shall, upon being informed of an individual's desire to file a formal discrimination complaint, instruct the individual how to obtain a copy of this Procedure and a "Discrimination Complaint Form" and shall, upon request, assist the individual in the completion of the form.

Discrimination complaints shall be made on the discrimination complaint form and shall be used to clearly record the date, nature, and other information pertinent to the complaint of alleged discrimination. The discrimination complaint form shall be submitted, in a timely manner, to: Authority EEO Officer, Illinois Criminal Justice Information Authority, Suite 1016, 120 South Riverside Plaza, Chicago, Illinois 60606. The discrimination complaint form must be completed in full to receive proper consideration by the Authority's EEO Officer.

b) Timeliness. Unless of a continuing nature, all complaints must be received by the Authority's EEO Officer in writing within ten (10) working days of the date of the alleged discrimination. Time limits established in this procedure may be extended by mutual agreement in writing,

CRIMINAL JUSTICE INFORMATION AUTHORITY

NOTICE OF PROPOSED RULES

signed by the complainant and the Executive Director of the Authority.

c) Screening. When a completed discrimination complaint form is received in a timely fashion, the Authority's EEO Officer will proceed to investigate the alleged discrimination, with the result and recommendation of findings due within ten (10) working days. When applicable, the complainant's immediate supervisor will be contacted for relevant information. All concerned parties may be contacted and requested to avail themselves to a fact-finding conference. The complainant shall be afforded an opportunity to appear before the Authority's EEO Officer and shall have a right to appoint a representative to appear on the complainant's behalf.

d) Withdrawal of the Complaint. The complaint, or part of the complaint allegation, may be withdrawn by the complainant during the investigation of the complaint upon receipt by the Authority's EEO Officer of a written request for withdrawal.

e) Dismissal of the Complaint. If, after an analysis of the merits of the complaint by the Authority's EEO Officer, there is a lack of substantial evidence to believe that discrimination has occurred, the complainant shall be notified of the findings in writing, and informed of the right to appeal to a state or federal EEO investigatory body.

Section 1580.30 Investigation Findings

At the conclusion of the investigation, if there exists reasonable cause to believe that discrimination may have occurred, the Authority's EEO Officer shall submit a written notice to the complainant and, when applicable, to the complainant's immediate supervisor, with the findings and recommendations to resolve the complaint. If the complainant cannot be satisfactorily resolved at this level within five (5) working days, the Authority's EEO Officer shall document the efforts made to resolve the complaint and shall provide a written explanation of the reasons why the complaint was not able to be resolved.

CRIMINAL JUSTICE INFORMATION AUTHORITY

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Section 1580.40 Final Level

The findings, conciliation efforts, and proposed settlement shall be forwarded to the Executive Director of the Authority (or in case the Executive Director is unavailable, to the Authority's Deputy Director) for final review, approval or other determination. The Executive Director (or Deputy Director) may conduct interviews and seek relevant advice and information with respect to the complaint.

The Executive Director (or Deputy Director) shall make known to the complainant and the Authority's EEO Officer the official position of the agency within five (5) working days of the receipt of the EEO Officer's written report. The Executive Director's (or Deputy Director's) decision shall be the final decision of the Authority.

Section 1580.50 Accessibility

All stages of this Procedure shall be readily accessible to and usable by individuals with disabilities consistent with federal and state laws and regulations.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF PROPOSED RULES

- 1) The Heading of the Part: Americans with Disabilities Act Grievance Procedure
- 2) Code Section: 41 Ill. Adm. Code 215
- 3) Section Number:

215.1	New Section
215.2	New Section
215.20	New Section
215.30	New Section
215.50	New Section
215.60	New Section
215.70	New Section
- 4) Statutory Authority: Implementing and authorized by Title II, Subtitle A of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II Regulations (28 C.F.R. 35.107).
- 5) A Complete Description of the Subjects and Issues Involved: The Americans with Disabilities Act of 1990, and the Regulations issued by the Department of Justice require the establishment of a grievance procedure whereby qualified persons with disabilities may resolve allegations of denial of public services on the basis of a disability.
- 6) Will the proposed rule replace and emergency rule currently in effect? No.
- 7) Does this rulemaking contain an automatic repeal date? No.
- 8) Does this rulemaking contain incorporations by reference? No.
- 9) Are there any other rule pending on this part? No.
- 10) Statement of Statewide Policy Objective (if applicable). These rules will not create or enlarge a State mandate.
- 11) Time, Place and Manner in which interested parties may comment on this proposed rulemaking.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF PROPOSED RULES

The Office will accept written comments for a period of 45 days after the date of this publication. The written comments should be directed to:

John J. Pavlou, General Counsel
Office of the State Fire Marshal
1035 Stevenson Drive
Springfield, Illinois 62703-4259

12) Initial Regulatory Flexibility Analysis:

- A) Date the rule submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 24, 1992.
- B) Types of Small Businesses and Municipalities Affected: None known.
- C) Reporting, bookkeeping or other procedure required for compliance: None.
- D) Types of Professional Skills necessary for Compliance: None.

The full text of the Proposed Rules begins on the next page.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF PROPOSED RULES

TITLE 41: FIRE PROTECTION
CHAPTER I: OFFICE OF THE STATE FIRE MARSHAL

PART: 215

AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section

- 215.1 Purposes
215.2 Definitions
215.20 Procedure
125.30 Designated Coordinator Level
215.50 Final Level
215.60 Accessibility
215.70 Case-by-case Resolution

AUTHORITY: Implementing and authorized by Title II, Subtitle A of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II Regulation (28 C.F.R. 35.107).

SOURCE: Adopted at 16 Ill.Reg._____, effective _____.

Section 215.1 Purposes

- a) This ADA Grievance Procedure ("Procedure") is established
- b) In general, the ADA requires that each program, service, and activity offered by the Office of the State Fire Marshal (Office), when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of the Office to foster open communication with all individuals requesting readily accessible programs, services and activities. The Office encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

OFFICE OF THE STATE FIRE MARSHAL

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NOTICE OF PROPOSED RULES

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Section 215.2 Definitions

"Complainant" is an individual with a disability who files a Grievance Form provided by the Office under this procedure.

"Designated Coordinator" is the person(s) appointed by the State Fire Marshal who is/are responsible for the coordination of efforts of the Office to comply with and carry out its responsibilities under Title II of the ADA including investigation of grievances filed by complainants. See 28 CFR 35.107.

"Grievance" is any complaint under the ADA by an individual with a disability who: meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Office, and believes he or she has been excluded from participation in, or denied the benefits of any program, service or activity of the Office or has been subject to discrimination by the Office.

"Office" means Office of the State Fire Marshal.

"Qualified individual with a disability" means an individual with a disability who, with or without, reasonable modifications to rules, policies, or practices the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department.

Section 215.20 Procedure

a) Grievances must be submitted through the channels defined below in the form and manner as described within the specified time limits. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the reviewer at the Designated Coordinator and Final Levels.

b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits shall mean that

the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure as the Office's last response.

c) The Office shall, upon being informed of that individual's desire to file a formal grievance, instruct the individual how to receive a copy of this Procedure and the Grievance Form.

Section 125.30 Designated Coordinator Level

a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the Grievance Form prescribed for that purpose. The Grievance Form must be completed in full in order to receive proper consideration by the Designated Coordinator.

b) Upon request, assistance shall be provided by the Office to complete the Grievance Form.

c) The Designated Coordinator, or his/her representative, shall investigate the grievance and shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and State Fire Marshal within ten (10) business days after receipt of the Grievance Form.

Section 215.50 Final Level

a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the State Fire Marshal of the Office for final review. The complainant shall submit these documents to the State Fire Marshal, together with a short written statement explaining the reason(s) for dissatisfaction with the Designated Coordinator's written response, within five (5) business days after receipt by the complainant of the Designated Coordinator's response.

OFFICE OF THE STATE FIRE MARSHAL

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- b) The State Fire Marshal shall appoint a 3-member panel to review the grievance at the Final Level. One member so appointed shall be designated chairman by the State Fire Marshal.
- c) The complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representation to appear on his/her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.
- d) Upon reaching a concurrence, the panel shall make recommendations in writing to the State Fire Marshal as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the State Fire Marshal in writing and shall also sign such recommendation.
- e) Upon receipt of recommendations from a panel, the State Fire Marshal shall approve, disapprove or modify the Panel recommendations, shall render a decision thereon in writing, shall state the basis therefore, and shall cause a copy of the decision to be served on the parties. The State Fire Marshal's decision shall be final. If the State Fire Marshal disapproves or modifies the Panel recommendations, the State Fire Marshal shall include written reasons for such disapproval or modification.
- f) The Grievance Form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the recommendations of the panel and the decision of the State Fire Marshal shall be maintained in accordance with the State Records Act, Ill. Rev. Stat. 1989, ch. 116, par. 43.3 et seq., or as otherwise required by law.

Section 215.60 Accessibility

The Office shall ensure that all stages of the Procedure are readily accessible to and usable by individuals with disabilities.

OFFICE OF THE STATE FIRE MARSHAL

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Section 215.70 Case-by-case Resolution

Each grievance involves a unique set of factors which include but are not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and, whether or not an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Office. Accordingly, termination of a grievance at any Level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of Part: Multifamily Rental Housing Mortgage Loan Program2) Code Citation: 47 Ill. Adm. Code 3103) Section Numbers: Proposed Action:

310.101 Amendment
 310.102 Amendment
 310.103 Amendment
 310.106 Amendment
 310.107 Amendment
 310.109 Amendment
 310.110 Amendment
 310.111 Amendment
 310.113 Amendment
 310.114 Amendment
 310.201 Amendment
 310.202 Amendment
 310.203 Amendment
 310.204 Amendment
 310.205 Amendment
 310.206 Amendment
 310.301 Amendment
 310.302 Amendment
 310.303 Amendment
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 310.306 Amendment
 310.307 Amendment
 310.309 Amendment
 310.401 Amendment
 310.402 Amendment
 310.403 Amendment
 310.404 Amendment
 310.405 Amendment
 310.602 Amendment
 310.603 Amendment
 310.604 Amendment
 310.701 Amendment
 310.702 Amendment
 310.703 Amendment
 310.801 Amendment
 310.802 Amendment
 310.803 Amendment
 310.804 Amendment
 310.805 Amendment
 310.806 Amendment
 310.901 Amendment

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

310.902 Amendment
310.913 Amendment

AUTHORITY: Implementing and authorized by the Illinois Housing Development Authority Act (Ill. Rev. Stat. 1989, ch. 67-1/2, pars. 301 et seq.).

SOURCE: Adopted at 5 Ill. Reg. 14583, effective prior to October 24, 1980 as corrected at 6 Ill. Reg. 620; codified at 7 Ill. Reg. 2433; amended at 8 Ill. Reg. 2996, effective February 28, 1984; amended at 9 Ill. Reg. 8631, effective May 29, 1985; Emergency amendment at 9 Ill. Reg. 10086, effective June 13, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11296, effective July 5, 1985; amended at 9 Ill. Reg. 14675, effective September 13, 1985; amended at 9 Ill. Reg. 16848, effective October 21, 1985; amended at 10 Ill. Reg. 13657, effective August 4, 1986; amended at 10 Ill. Reg. 13987, effective August 11, 1986; amended at 14 Ill. Reg. 683, effective December 27, 1989; amended at 11 Ill. Reg. _____, effective _____.

4) Will these proposed amendments replace emergency rules currently in effect? No.5) Do the amendments contain an automatic repeal date? No.6) Do these proposed amendments contain incorporations by reference? No.7) Are there any other rules pending on this Part? No.8) Statement of Statewide Policy Objectives: This proposed rulemaking amends the statewide program to create and retain affordable multifamily housing for low and moderate income persons and families.9) Time, Place and Manner in which interested persons may comment on this proposed amendment: Interested parties may submit comments, data, views or arguments concerning this rulemaking in writing to: Diane Corbett, 401 N. Michigan Ave., Suite 900, Chicago, Illinois 60611. The Authority will consider all written comments received at the above address within 45 days of the date of publication on this notice.10) Initial Regulatory Flexibility Analysis:

A) Date amendment was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 27, 1992.

B) Types of small businesses affected: Proposed amendments will have a favorable impact on small to midsize real estate

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

developers and contractors.

- C) Reporting, bookkeeping or other procedures required for compliance: No new requirements.
- D) Types of professional skills necessary for compliance: No new professional skills needed.

The full text of the proposed amendments begins on the next page:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 310

MULTIFAMILY RENTAL HOUSING MORTGAGE LOAN PROGRAM

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SUBPART D: MORTGAGE LOAN

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Maximum Mortgage Loan Amount
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Development Funds and Property
Reserve Fund for Replacements

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SUBPART E: CONSTRUCTION
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SUBPART F: MARKETING AND MANAGEMENT
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SUBPART G: OCCUPANCY
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SUBPART H: RATE OF RETURN ON EQUITY FOR LIMITED-PROFIT ENTITIES

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ILLINOIS HOUSING DEVELOPMENT AUTHORITY

NOTICE OF PROPOSED AMENDMENTS

310.913 Rehabilitation Waiver

AUTHORITY: Implementing and authorized by the Illinois Housing Development Authority Act (Ill. Rev. Stat. 1989, ch. 67 1/2, pars. 301 et seq.).

SOURCE: Adopted at 5 Ill. Reg. 14583, effective prior to October 24, 1980 as corrected at 6 Ill. Reg. 620; codified at 7 Ill. Reg. 2433; amended at 8 Ill. Reg. 2996, effective February 28, 1984; amended at 9 Ill. Reg. 8631, effective May 29, 1985; Emergency Amendment at 9 Ill. Reg. 10086, effective June 13, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11296, effective July 5, 1985; amended at 9 Ill. Reg. 14675, effective September 13, 1985; amended at 9 Ill. Reg. 16848, effective October 21, 1985; amended at 10 Ill. Reg. 13657, effective August 4, 1986; amended at 10 Ill. Reg. 13987, effective August 11, 1986; amended at 14 Ill. Reg. 683, effective December 27, 1989; amended at ___ Ill. Reg. ___, effective ___.

SUBPART A: GENERAL RULES

Section 310.101 Authority

These Rules are authorized by and made pursuant to Sections 7.2, 7.19, 7.24b, 7.24e, 8, 9, 10, 11, 12 and 14 of the Act and shall govern the Program.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.102 Purpose and Objectives

These Rules are established to accomplish the general purposes of the Act and in particular the making of mortgage loans for the construction or rehabilitation of multifamily rental housing in accordance with the Program.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.103 Definitions

As used in this Part, the following words or terms mean:

"Act": The Illinois Housing Development Act (Ill. Rev. Stat. 1984-Suppl. 1989, ch. 67 1/2, pars. 301 et seq.) as amended from time to time.

"Authority": The Illinois Housing Development Authority.

"Bonds": The bonds issued by the Authority from time to time to finance the Program.

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"Builders'/Sponsors' Profit and Risk Allowance" ("BSPRA"): The allowance given to the an Owner against the Equity requirements for a Mortgage Loan. ~~It is an amount not to exceed~~ an amount equal to ten percent (10%) of the total estimated replacement cost of a Development (see Section 310.401), ~~excluding all costs of land, relocation, and off-site improvements.~~

"Chairman": The Chairman of the Authority.

"Change Order": Any written order evidencing a change in construction plans, specifications, or a contractor's work which is executed by an Owner and general contractor and approved by the Authority in writing.

"Clearinghouse": A State, regional, or metropolitan agency designated by the Governor or the Authority or established by State statute to provide notice to appropriate State and local agencies of proposed Developments and to review such Developments.

"Commercial Tenant": The Any entity leasing commercial facilities in a Development.

"Construction Completion Date": The date that construction of a Development is substantially completed, as approved by the Authority in writing.

"Cost Certification Cutoff Date": The last day of the month in which the Construction Completion Date falls.

"Cumulation Date": The date from which an Owner's right to make Distributions shall begin cumulating, which shall be the Initial Closing Date.

"Cumulative Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution unpaid but cumulated by an Owner in a prior fiscal year.

"Current Distribution": A Distribution of Surplus Cash and/or Residual Receipts representing all or part of a Distribution earned in a current fiscal year.

"Deputy Director": The Deputy Director of the Authority.

"Development": The Real Estate, together with all improvements, buildings, equipment, and personal property appurtenant thereto.

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"Development Funds": All cash, rent subsidies, gross Development income, bank accounts, certificates of deposit, trust funds, reserves, escrows, accounts receivable, and other such assets of a Development.

"Director": The Director of the Authority.

"Distribution": Any withdrawal or taking of cash from Surplus Cash and/or Residual Receipts, including segregation of cash for subsequent withdrawal, for payment to or on behalf of an Owner pursuant to the Authority's written authorization of such Distribution.

"Eligible Mortgage": Any Limited-Profit Entity, or Nonprofit Corporation or any Illinois land trust the beneficiary of which is a Limited-Profit Entity or Nonprofit Corporation, but only if: (i) such Mortgage's ownership of the Development (including any partnership interest or stock ownership interest in such Mortgage), or such beneficiary's interest in such Illinois land trust (including the ownership of any partnership interest or stock ownership interest in such beneficiary), shall not cause the underlying any tax-exempt bonds used to finance the Development to become taxable for federal income tax purposes; and (ii) the organizational documents of such Mortgage or such beneficiary as set forth referred to in Section 310.303 of this Part at all times are in compliance with the requirements of Section 310.303 of this Part.

"Equity": The difference between the amount of a Mortgage Loan and the total cost of a Development (~~see Section 310.401~~) except as otherwise provided for in Section 310.403(f) below.

"Final Closing Date": The date on which the Authority issues its final closing memorandum.

"Initial Closing Date": The date on which the Authority issues its initial closing memorandum.

"Limited-Profit Entity": Any individual, joint venture, partnership, limited partnership, trust, or corporation organized or existing under the laws of the State of Illinois or authorized to do business in the State and having articles of incorporation or comparable documents of organization or a written agreement with the Authority which, in addition to meeting other requirements of law, meets the requirements of the Act.

"Members": The Members of the Authority.

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"Mortgage": The mortgage or other instrument in the nature of a mortgage, together with any supplements thereto and amendments or modifications thereof, executed as security for a Mortgage Loan.

"Mortgage Loan": The loan from the Authority to a Mortgagor to be used for the acquisition of the Real Estate and for the planning, construction, rehabilitation, development, completion, or financing of a Development.

"Mortgage Note": The document executed as evidence of a Mortgagor's indebtedness under a Mortgage Loan and any supplements thereto and modifications or amendments thereof.

"Mortgagor": The Limited-Profit Entity, Nonprofit Corporation, or Trustee holding legal title to a Development and who has executed and delivered to the Authority the Mortgage and Mortgage Note.

"Nonprofit Corporation": A nonprofit corporation incorporated pursuant to the provisions of the Illinois General Not-for-Profit Corporation Act or the State Housing Act of 1932 and having articles of incorporation which, in addition to meeting other requirements of law, meet the requirements of the Act.

"Notes": The notes issued by the Authority from time to time to finance the Program.

"Owner": The Limited-Profit Entity or Nonprofit Corporation holding legal title to Real Estate or a Development or, when the Real Estate or the Development is held in an Illinois land trust, the Limited-Profit Entity or Nonprofit Corporation owning the beneficial interest in a Trust. Under no circumstances shall "Owner" mean the Authority or a Trustee.

"Part": This Part 310.

"Program": The Authority's multifamily rental housing mortgage loan program.

"Real Estate": The real property upon which a Development is to be or has been constructed.

"Residual Receipts": Any cash remaining at the end of an annual fiscal period after the Authority, if applicable, deducts from Surplus Cash the amount of all Distributions.

"Rules": The Rules and Regulations of the Authority as

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NOTICE OF PROPOSED AMENDMENTS

supplemented and amended from time to time, including, without limitation, this Part.

"Staff": The Director and Deputy Director and the employees of the Authority.

"State": The State of Illinois.

"Surplus Cash": That part of gross Development income remaining at the end of a fiscal year after Development Funds, if applicable, have been disbursed in accordance with established priorities (see Section 310-404).

"Tenant": The person or family leasing a dwelling unit in a Development.

"Tenant Selection Plan": The tenant selection plan approved by the Authority for a Development.

"Trust": The Illinois land trust of which an Owner is the sole beneficiary and which holds legal title to a Development.

"Trustee": The Trustee of an Illinois land trust holding legal title to a Development.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.106 Standards

In administering the Program, the Authority, the Chairman, the Director, and the Staff shall in the exercise of discretion consider, in addition to the criteria specifically set forth in these Rules, the purposes of the Program to provide decent, safe, and sanitary multifamily rental housing; the requirements of applicable State and Federal law; the financial condition and previous experience of potential and participating developers; the Authority's ability to purchase or redeem the any Bonds and to comply with the requirements of the resolutions authorizing the any Bonds; the Authority's ability to comply with the terms and provisions of any Notes; the financial integrity of the Program; the housing needs of the State; architectural and construction quality; preservation of the value of the Development as security for the Mortgage Loan; the ability of the Owner to repay the Mortgage Loan out of gross Development income; the potential prepayment of a Mortgage Loan; the desirability of achieving a reasonable geographic distribution of Developments throughout the State; the standards and practices of the a prudent lender; the requirements of local housing codes and zoning laws; specific standards set forth in Authority agreements and documents; or any other factors relevant under the circumstances.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.107 Forms and Procedures for the Program

The Staff may prepare, use, supplement, and amend such forms, agreements, and other documents and such procedures as may be necessary to implement the program, all as may be prescribed by the Director.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.109 Waiver

By resolution the Members may waive or vary particular provisions of this Part to conform with the requirements of applicable State or Federal law or in exceptional circumstances, to conform with the determination of the Authority that the application of such provisions may result in undue hardship or an unreasonable result.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.110 Amendment

This Part may be supplemented, amended, or repealed by the Members from time to time and in such manner as they may determine consistent with the Rules, the Act, and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.111 Severability

If any clause, sentence, paragraph, subsection, section, or subpart of this Part be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, section, or subpart thereof as to which such judgment is rendered.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.113 Titles and Captions

Titles and captions of subparts, sections, and subsections are used for convenience and reference and are not a part of the text.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.114 Calendar Days

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Days shall mean calendar days. Due dates falling on a Saturday, Sunday, or legal State or Federal holiday shall be deemed to fall on the next calendar day that is not Saturday, Sunday, or a legal State or Federal holiday.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

SUBPART B: NOTICE OF PROPOSED DEVELOPMENTS

Section 310.201 Applicability and Purpose of Notification

a) Purpose

This subpart is established to notify certain persons and agencies pursuant to Section 7.24b of the Act that a Developer proposes to construct a Development in their district, county or municipality.

b) Applicability

The provisions of this subpart shall apply only to Developments subject to Part 310.

c) Compliance

The A Developer's feasibility conditional commitment application shall not be deemed to be complete until the provisions of this Subpart have been complied with. A Developer's failure to comply shall relieve the Authority of any all obligations regarding the Development.

d) Developer's Acts

In responding to comments, attending hearings, or undertaking any other activities pursuant to this Subpart, the a Developer shall not hold itself out to represent the Authority and shall not take or suffer any act which would incur any obligation on behalf of the Authority.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.202 Notification by Authority

a) Notice of Development

At the time the site--and--market a feasibility letter is issued for a proposed Development, the Authority shall give written

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

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notice of the proposed Development to the following persons and agencies:

- 1) the chairman of the county board of the county in which the Development is proposed to be located;
- 2) the mayor or other chief executive of the municipality (means cities, villages and incorporated towns), if any, in which the Development is proposed to be located;
- 3) in municipalities with a population of more than 1,500,000 persons, the alderman of the ward in which the Development is proposed to be located;
- 4) appropriate Clearinghouses; and
- 5) each member of the General Assembly from the legislative district in which the Development is proposed to be located.

b) Forms

Notice under this section shall be made on Authority forms.

c) Contents

The notice shall set forth the name and address of the proposed Development; the name, address, and telephone number of the Developer; the estimated amount of the mortgage; the type of any subsidies; the total number of units; the total number of any subsidized units; the type of Development (for example, elderly, family, or handicapped); and any other information which the Authority deems relevant.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 310.203 Comments and Responses

a) Comments

The persons and agencies receiving notice of a proposed Development pursuant to Section 310.202 shall have 30 days from the date of mailing to submit written comments to the Developer.

b) Developer's Response

The Developer shall respond in writing to all comments received under this section.

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(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 310.204 Feasibility Conditional Commitment Application

a) Documents

With the feasibility a conditional commitment application for a proposed Development, the Developer shall submit to the Authority the following documents:

- 1) a copy of every written comment and a written summary of every oral comment received pursuant to Section 310.203(a);
- 2) a copy of every response made pursuant to Section 310.203(b);
- 3) a history of conferences, hearings, and other activities undertaken in relation to comments on the proposed Development;
- 4) a brief summary of what the Developer has done in response to comments; and
- 5) a certification that the information provided under this section is accurate and complete.

b) Information

Sufficient information shall be provided under this section to enable the Authority to determine whether comments received pursuant to Section 310.203 have been adequately considered and responded to.

c) Denial

The Authority may deny a Developer's feasibility conditional commitment application for, among other causes reasons, failure to comply with the conditions of the site-and-market feasibility letter, which conditions shall include evidence of compliance with the provisions of this Subpart. Said denial shall be in writing and shall state the reasons therefor. If the Authority determines that it cannot proceed must cease with processing a feasibility conditional commitment application, the conditions necessary for continued processing will be communicated to the Developer in writing and the time period in which the conditions must be met will be set forth.

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d) Assistance of Authority

In the interval between the Authority's issuance of the site and--marked a feasibility letter for a Development and the Developer's submission of its feasibility conditional commitment application for such Development, it shall be the Developer's responsibility to seek the assistance of the Authority, if needed, in addressing comments received pursuant to Section 310.203.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.205 Hearings

The Developer shall provide written notice to the Authority of any public or adjudicatory hearing which may be held in connection with the proposed Development. The Developer shall mail such notice to the Authority within 2 days of receiving notice or otherwise becoming aware of such hearing. It shall be the Developer's responsibility to prepare for and attend such hearings and to respond to any inquiry made at or in connection with such hearings regarding the proposed Development.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.206 Notice of Issuance of Feasibility Conditional Commitment Letter

When the Authority issues a feasibility conditional commitment letter for a Development subject to this Subpart, it shall at the same time notify the persons and agencies named in Section 310.202 of such issuance.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

SUBPART C: OWNER

Section 310.301 Eligible Mortgages

The Authority may make Mortgage Loans under the Program to Eligible Mortgages. The Owner of the Development shall at all times be an Eligible Mortgagor. If the Authority learns that an Owner is not in compliance an Eligible Mortgagor, then the Authority shall take the action, if any, specified in the ~~contract~~ Mortgage Loan documents.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.302 Land Trusts

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Whenever the Real Estate or a Development is held in an Illinois land trust, the agreement creating the Trust and establishing the respective rights, powers, and duties of the Trustee and Owner shall be in a format approved by the Authority. Such format shall be approved if examination by the Authority discloses that it meets the legal requirement necessary to create a valid Illinois land trust and complies with the Act and this Part as determined by the Authority. The deed in trust and trust agreement shall be in compliance with the Act and this Part as determined by the Authority. Any trust agreement shall not be amended or revoked without the prior written approval of the Authority. If the Authority determines that Section 310.105 and 310.106 are complied with, such approval shall be granted. Upon either the request of the Owner or the Authority, the Trustee shall furnish the Authority with copies of the trust agreement and all records in its possession relating to the trust agreement, the Real Estate, and the Development. The Authority will may request such documents when it believes there is non-compliance with the Act or this Part 310. The trust agreement, the Mortgage Loan documents and the organizational documents of Owner described in Section 310.303 of the Rules this Part shall require such Authority approvals of, and impose such restrictions on, the conveyance, assignment, leasing, mortgaging, pledging or other transfer, directly or indirectly, by operation of law, (for example, bankruptcy proceedings), or otherwise, of the Development, and the beneficial interest in, and power of direction over, the Trust or any partnership interest or stock ownership interest in the beneficiary of the Trust.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.303 Organizational Documents

The organizational documents of a joint venture, partnership, limited partnership, or corporation having articles of incorporation shall contain provisions to qualify and maintain the Owner as a Limited-Profit Entity or Nonprofit Corporation as defined in the Act and this Part, to qualify and maintain the Trustee or the Owner, as the case may be, as eligible mortgagors as defined in this Part, and to insure that the Owner, and each person or entity which has an ownership interest in the Owner and/or Trustee, are required to comply with the Act, this Part and shall not cause the underlying bonds used to finance the development, if any, to become taxable for federal tax purposes. The provisions of such documents of organization as are required by this Section 310.303 shall not be amended without prior written Authority approval. The--amendment of the provisions of such documents shall be allowed so long as the Authority determines that they comply with Sections 310.103, 310.106 and this Section 310.303.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.304 Books and Records

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The books and records of the Development shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires for the purpose of determining compliance with the Rules, the Act, and all contracts and agreements relating to the Program. The books and records of the Owner, if separate from the books and records of the Development, shall be prepared and maintained in accordance with Authority requirements and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.305 Audits

The Development and offices, architectural plans and specifications, apparatuses, devices, books and records, contracts, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to inspection, examination, and copying by the Authority and its authorized representatives or agents at such times as the Authority reasonably requires. All audits, certifications, and financial reports which the Owner is required by contract with the Authority to allow, undertake, or prepare shall be made by an independent certified public accountant acceptable to the Authority.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.306 Annual Financial Report

Within sixty days of after the end of the Development's fiscal year, the Owner shall furnish the Authority with a complete annual financial report based upon the books and records of the Development and the Owner, prepared in accordance with Authority requirements, and certified by the Owner and an independent certified public accountant acceptable to the Authority.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.307 Furnishing Information

The Owner shall furnish such reports, projections, certifications, analyses, and tax returns as required by applicable federal or State statutes, regulations, or subsidy or assistance programs or by the Authority and shall furnish specific answers to the Authority's questions about the Owner's income, assets, liabilities, and contracts and about the administration, operation, maintenance, occupancy, financial soundness, and physical condition of the Development.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

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Section 310.309 Standards for Approval of Conveyance and Amendment of Documents

In determining whether to approve and/or impose restrictions on the conveyance, assignment, leasing, mortgaging, pledging or other transfer of all or any part of the Development, and beneficial interest in, and power of direction over, the Trust or any partnership interest or stock ownership interest in the beneficiary of the Trust under Section 310.302 and in determining whether to approve amendments to the documents of organization under Section 310.303, the Authority shall grant such approval, with any necessary restrictions, if the Authority determines that said action will not have an adverse impact upon the financial stability of the Development or tax-exempt status of the underlying bonds, if any.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

SUBPART D: MORTGAGE LOAN

Section 310.401 Maximum Mortgage Loan Amount

- a) Establishing Amount. The maximum Mortgage Loan amount available to an Owner which is a Limited-Profit Entity is 90% of the total estimated replacement cost of the Development or 90% of the total cost of the Development, as those costs may be determined and approved by the Authority in its sole discretion, whichever cost is less. The maximum Mortgage Loan amount available to the an Owner which is a Nonprofit Corporation is 100% of the total estimated replacement cost of the Development or 100% of the total cost of the Development, as those costs may be determined by the Authority in its sole discretion, whichever cost is less. In calculating the total estimated replacement cost of the Development, the Authority shall consider the design architect's fees; the supervisory architect's fees; legal, accounting, and other organizational fees; marketing, consulting, and purchasing agent fees; construction interest; the Authority's service and Development fees; real estate and other taxes; title and recording fees; financial contingency and construction contingency; the Development Cost Escrow, if any; BSPRA; relocation costs; off-site improvements; land costs; carrying charges; and any other costs approved by the Authority. In calculating the total cost of the Development, the Authority shall consider trade payments to contractors and subcontractors, general overhead, bond premiums, insurance, builder's profit (if any), exchange orders, and discounts, rebates, and any other costs approved by the Authority.

- b) Mortgage Loan Increase. Nothing contained in this Section shall

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prohibit the Authority from increasing the amount of a Mortgage Loan above the limitations specified herein ~~in the event that~~ if the Authority, in its sole discretion, determines that such increase is necessary. In deciding whether to approve a Mortgage Loan increase, the Authority shall consider the physical condition of the Development, the value of the Development as security for the Mortgage Loan, the Authority's ability to provide such Mortgage Loan increase, the ability of the Owner to repay the Mortgage Loan out of gross Development income, the financial status of the Development and any other relevant factors.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.402 ~~Amortization~~ Maturity of Mortgage Loans

The maximum ~~amortization-term~~ maturity of a Mortgage Loan to be made by the Authority for permanent financing of multifamily rental housing under this Program shall not exceed 65 years and may be shorter at the sole discretion of the Authority. In determining the ~~amortization~~ term of a Mortgage Loan, the Authority shall take into account its ability to pay when due the principal (including any sinking fund installments) and interest on the any Bonds or Notes; its ability to purchase or redeem ~~the~~ any Bonds and to comply with the requirements of the resolutions authorizing ~~the~~ any Bonds; its ability to comply with the terms and provisions of any Notes; the feasibility of the proposed Development; the financial integrity of the Program; the requirements of applicable State and Federal law; and any other relevant factors.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.403 Equity and Distributions

- a) Right to Distributions. As provided in the Act, an Owner shall have the right, commencing as provided in subsection (b) of this Section, to make annual Distributions in an amount not to exceed six percent (6%) of its Equity in a Development except as otherwise provided ~~in~~ pursuant to Sections 310.801 through 310.8065 inclusive, except that if a Distribution cannot be made as provided in subsections (c) and (d) of this Section, an Owner may cumulate the right to make a Distribution. In partial fiscal years following the Cumulation Date, the amount of a Distribution shall be cumulated pro rata.

- b) Cumulation Date. An Owner's right to a Distribution shall begin to cumulate on the Initial Closing Date, which shall also be known as the Cumulation Date.

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- c) Source of Distributions. An Owner may make Current and Cumulative Distributions solely out of Surplus Cash and/or Residual Receipts. If Surplus Cash or Residual Receipts ~~is~~ are ~~unavailable~~ in a given fiscal year, an Owner shall make no Current Distribution, but the right to make such Distribution shall cumulate. If Surplus Cash and/or Residual Receipts ~~is~~ are insufficient in a given fiscal year to make a Distribution in an amount equal to six percent (6%), or as otherwise permitted in Sections 310.801 through 310.8065 inclusive, of an Owner's Equity in a Development, an Owner may distribute all available Surplus Cash and/or Residual Receipts and cumulate the right to make the rest of the Distribution in future years when and if Surplus Cash and/or Residual Receipts ~~is~~ are available.

- d) Timing of Distributions. No Distribution shall be made until after the Final Closing Date, even if such date is later than the Cumulation Date. Even if Surplus Cash and/or Residual Receipts ~~is~~ are available, the initial and all subsequent Distributions, including Cumulative Distributions, may be made only after the Authority has approved the Development's annual financial report (see Section 310.306); the Development has an approved Development budget for the next fiscal year; the Owner has complied with all outstanding notices of requirements for proper maintenance and operation of the Development; the Owner has cured any defaults or breaches of applicable Authority Rules, contracts, and agreements; and the Authority has issued its written authorization of such Distribution.

- e) Amount of Equity. As required by the Act, the Authority shall establish an Owner's Equity in a Development at the time of making the final Mortgage Loan advance. ~~The amount of an Owner's Equity in a Development is the difference between the amount of the Mortgage Loan and the total cost of the Development (see Section 310.401). In no event shall the amount of such Equity may be calculated to include any grants or other funds not originating with the Owner. Once established by the Authority, the amount of an Owner's Equity shall remain constant so long as the Mortgage Note and Mortgage are outstanding on the Development unless adjusted pursuant to an approved Mortgage Loan increase (see Section 310.401) by resolution of the Members based on the criteria set forth in subsection 310.403(f) below.~~

- f) Increase in Amount of Equity.

- 1) If an Owner agrees either to preserve the Development as affordable to persons and families of low and moderate income to the full term of the Mortgage Loan or create additional units of housing affordable to persons or

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families of low and moderate income, the Authority, by resolution of its Members, may increase Owner's Equity to an amount not to exceed the difference between the unpaid balance of the Mortgage Loan and the Development's appraised value at the time of the request by the Owner for an Equity increase. The appraisal shall be based on the Development's highest and best use and be conducted by an appraiser acceptable to the Authority. For purposes of the increase in Owner's Equity, the Development's appraised value may be updated by the Owner no more frequently than every five years after an increase is granted under this subsection (f) and the amount of Owner's Equity may be adjusted to reflect the updated appraisal. The cost of the appraisal shall not be a Development expense.

2) It shall be a condition of the Authority increasing Owner's Equity that (a) the Authority give its prior written consent to any increase in the rental charges for the Development and (b) the Authority determine, in its sole discretion, that (i) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 below for the subsequent five years, and (ii) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.

3) The Authority shall require the Owner to execute an agreement evidencing the increase in Equity and containing the Owner's agreement either to preserve the Development as affordable for low and moderate income to the full term of the Mortgage or create additional units of housing affordable to persons or families of low and moderate income.

4) Any increase in Owner's Equity approved pursuant to this Section shall conform with any relevant federal statutes, rules or regulations.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 310.404 Development Funds and Property

All Development Funds received by an Owner or its agent shall be deposited to and maintained, as the Authority directs, in appropriate accounts with the Authority, or in a federally insured bank or savings and loan association or other financial institution located and qualified to do business in Illinois and whose deposits are insured by the Federal Deposit Insurance Corporation

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~~or the Federal Savings and Loan Insurance Corporation government, or in other fiduciaries acceptable to the Authority. The Authority shall by contract with the Owner establish priorities for the disbursement and use of Development Funds, including the funding of reserves and escrows, and require that the Owner have personal liability for Development Funds or Development property which comes into its hands or the hands of its agents which by contract with the Authority the Owner is not entitled to retain or has disbursed or used in violation of Authority requirements. In establishing such priorities, the Owner and Authority shall take into account the purposes of the Program; the financial stability of the Development; the physical condition of the Development; the value of the Development as security for the Mortgage Loan; and other relevant factors. It shall be a violation of the Rules for the Owner or its agent to disburse, use, or retain Development Funds or Development property other than in accordance with the requirements or priorities established pursuant to this section and set forth in Authority contracts or other documents.~~

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 310.405 Reserve Fund for Replacements

The Owner of a Development shall set aside out of gross Development income and shall deposit with the Authority such sums as the Authority shall specify or applicable federal statutes, regulations, or agreements require to be deposited to an account known as the Reserve Fund for Replacements. No proceeds of the Reserve Fund for Replacements may be withdrawn, disbursed, or applied without written Authority approval. The sums set aside, together with any income earned thereon, shall be used to pay the costs of replacing structural elements and mechanical equipment of the Development and for such other Development expenses as the Authority in its sole discretion may approve. In determining the amounts to be set aside or deposited to the Reserve Fund for Replacements, the Authority shall consider the nature and condition of any structural elements or mechanical equipment which may have to be replaced; the estimated useful life of any such structural elements or mechanical equipment; the estimated cost of replacements; applicable federal requirements; construction costs; potential gross Development income; and any other relevant factors. In determining whether to approve disbursements from the Reserve Fund for Replacements, the Authority shall consider the benefit to the Development of the proposed disbursement; the amount to be disbursed; the amount on deposit in the Reserve Fund for Replacements; whether the Owner is delinquent in making deposits to the Reserve Fund for Replacements or is otherwise delinquent in making payments or deposits under the Mortgage Loan documents; other uses for which the Reserve Fund for Replacements is likely to be needed; and any other relevant factors.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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SUBPART F: MARKETING AND MANAGEMENT

Section 310.602 Marketing and Management Plans

a) Approval. Before the Authority makes a Mortgage Loan and at other times required by the Authority, the Owner shall submit for the Authority's approval a Marketing Plan and a Management Plan for the Development. In deciding whether to approve the Marketing Plan and the Management Plan, the Authority shall consider the purposes of the Program; the provisions of the Tenant Selection Plan; and any other relevant matters.

b) Compliance. The Marketing Plan and the Management Plan shall comply with all applicable federal and State statutes and regulations and with the terms and conditions of all applicable contracts and agreements providing for federal subsidies or assistance relating to the Development.

c) Contents of Marketing Plan. The Marketing Plan shall set forth the policies and procedures to be used by the marketing agent in marketing the Development and shall address the qualifications of the marketing agent; the nature of the market to be served by the Development; the dates of availability of occupiable units by type and location; the dates of availability and locations of Development facilities essential to the marketing campaign, including any model units, the rental office, and the or community building; the promotion of the Development, including the use of mass media, public relations, brochures, signs, equipment and furnishings for model units and the rental office, and marketing staff; the intended mix of family, elderly, and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix; the method of processing prospective tenants; the criteria upon which prospective tenants' applications for occupancy are to be approved or disapproved; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action, or natural disaster; rent schedules; and any other relevant matters.

d) Contents of Management Plan. The Management Plan shall set forth the policies and procedures to be used by the managing agent in operating the Development and shall address the qualifications of the managing agent; procedures for recruiting and supervising management personnel; physical maintenance of the Development; procedures for tenant selection; preference for occupancy in the Development for persons and families displaced by urban renewal, slum clearance, other governmental action, or natural disaster; tenant/landlord relations; eviction procedures; marketing;

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financial reporting; books and records of the Development; the intended mix of family, elderly, and handicapped Tenants; where appropriate, the intended Tenant income mix and method of achieving such a mix; the method of processing prospective tenants; the criteria upon which prospective tenants' applications for occupancy are to be approved or disapproved; and any other relevant matters.

e) Owner's Responsibility. The Owner shall be responsible for ensuring the marketing agent's and the managing agent's compliance with all applicable ordinances, regulations, statutes, and Authority Rules, agreements, and requirements.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.603 Maintenance

The Owner shall maintain the Development, including without limitation the dwelling units, commercial facilities, and grounds and equipment related to the Development, in a decent, safe, and sanitary condition, in a tenantable and rentable state of repair, and in compliance with applicable federal, State, and local statutes, regulations, ordinances, standards and codes.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.604 Cost of Services

The Owner shall not pay more for administrative, operating, and maintenance expenses than is reasonable given the location and size of the Development, the level of administration, operation, and maintenance required by applicable Authority Rules and agreements, the requirements of the Marketing Plan, Management Plan, and Tenant Selection Plan, the uniqueness or quality of available services or supplies, the presence of an emergency or other time constraint, the creditworthiness of suppliers and contractors, and any other relevant factors. The Owner shall solicit bids for certain contracts in accordance with Authority agreements.

(Source: Amended at Ill. Reg. _____, effective _____)

SUBPART G: OCCUPANCY

Section 310.701 Tenant Selection Plan

a) Approval. Before making a Mortgage Loan conditional commitment under the Program, the Authority shall approve a Tenant Selection Plan submitted by the Owner and setting forth the income limits for Tenants of the Development. In approving the Tenant Selection Plan, the Authority shall consider whether the

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selection procedures will be equitable, considering the size and circumstances of the Tenant family; promote a heterogeneous mix of income levels to the extent appropriate; maintain the financial stability of the Development; meet the requirements of subsection (b) of this section; and comply with the Authority's Rules, agreements, and requirements.

b) Compliance. The Tenant Selection Plan shall comply with all applicable State and federal statutes and regulations, with the terms and conditions of all applicable contracts and agreements providing for federal subsidies or assistance relating to the Development, and with the affirmative fair housing marketing plan approved by the Authority for the Development.

c) Requirement for Developments on for which a Conditional Commitments Letter to Finance Were Has Been Issued on or after August 9, 1984. With respect to developments for which a conditional commitment letter to finance the original principal amount of the mortgage loan has been issued on or after August 9, 1984, the Tenant Selection Plan submitted by the owner and approved by the Authority shall specify how many units in the Development shall be held available to persons and families of low or moderate income, as defined in Sec. 2(g) of the Act and Treas. Reg. Sec. 1.103-8(b)(8)(v)(1984) and set forth the rental charges for those units. In determining the number of units which shall be so held available for such rentals, and in determining the rental charges which may be established for those units, the Authority shall establish the financial benefit of the mortgage loan to the owner of the development, by comparing the interest rate of the mortgage loan to be made by the Authority to an index computed by the Authority of the Government National Mortgage Association (GNMA) index for mortgage-backed securities, in establishing the financial benefit to the owner of a development, the Authority shall calculate the difference between the interest rate charged by the Authority and that of the GNMA index and the difference between the debt service of each shall be the amount of the financial benefit. THE NUMBER OF SUCH UNITS AND RENTALS FOR THEM SHALL BE DETERMINED IN SUCH A WAY THAT IN THE SOLE JUDGMENT OF THE AUTHORITY (111 Rev. Stat. 1984 Supp. Ch. 67 1/2, par. 210) in compliance with this Part, more than 50% of that benefit shall be used to reduce rentals for those units to rentals lower than that which would otherwise have been charged for those units without the benefit of the Authority's financing. provided however require that the number of dwelling units reserved for low or moderate income persons and families of low and moderate income in each Development shall not be less than the number required by applicable federal and State law. in determining the rental

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which would otherwise have been charged for these units, the Authority shall take into consideration debt service, operating expenses and the return on owner's equity.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.702 Income Limits

a) General. A persons's or family's initial occupancy of a unit held available for rental to persons and families of low or moderate income, as defined in Section 2(g) of the Act, Treas. Reg. Sec. 1.103-8(b)(8)(v)(1984) (24 CFR 889.103(1984)), shall be limited to persons and families initially meeting the income limits set forth in subsection b). If a person or family meeting income requirements at the time of initial occupancy subsequently fails to continue to meet such requirements, that failure shall not constitute non-compliance by that tenant.

b) Determination of Income Limits.

1) For all Developments an income limitation is established equal to 80% of the median family income for the metropolitan statistical area in which the Development is located for that proportion of the units (20% or 15% in certain Targeted areas) as is required by the Treasury Regulations under Section 103(b) of the United States Internal Revenue Code (26 U.S.C. 103(b)), as amended.

2) Annually, the Authority shall

A) determine the rentals which have been charged for Developments which have been constituted or rehabilitated without assistance from a governmental source;

B) designate as a percentage of median family income measured as provided in Section 103(b)(12)(c) of the Internal Revenue Code (26 U.S.C. 103(b)(12)(c)(1984)) the income limits of persons and families of low and moderate income who would be unable to afford the rentals charged for such units under subsection (b)(1)(A) if they were to expend 20% of family income as rent for such unit.

32) Provided, however, notwithstanding any such determination, for Developments with Assisted Mortgage Financing, as that term is defined in the Act, involving

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programs of the United States Department of Housing and Urban Development (HUD), income limitations shall be established (at levels higher or lower than otherwise would be established) which shall be consistent with applicable regulations and/or feasibility criteria of HUD or the Federal Housing Administration programs under the National Housing Act mortgage insurance or co-insurance programs under Sections 207, 220, 221, 236 and 255 of the National Housing Act (24 CFR 207.1 et seq. (1984); 24 CFR 220.1 et seq. (1984); 24 CFR 221.1 et seq. (1984); 24 CFR 236.1 et seq. (1984); 24 CFR 255.1 et seq. (1984)). The limitations may be established as a percentage of median income or as a dollar amount. No such income limitations shall be established for such Developments unless the Authority shall determine that without the Authority mortgage loans and the HUD related Assisted Mortgage Financing rentals for such Developments would be required to be at levels which would equal or exceed 30% of the income of the Tenants.

c) Areas of Determination. Determination of income limits for persons and families of low and moderate income shall be made for metropolitan statistical areas (or segments thereof), as defined in Section 103A(1)(4)(B) of the Internal Revenue Code, (26 U.S.C. 103(1)(4)(B)(1984)), in the State and for that portion of the State not within any metropolitan statistical area (or segments thereof).

d) Certification. The Owner shall obtain from each prospective tenant intending to occupy a unit held available for rental to persons and families of low or moderate income a certification of income which shall be submitted by letter to the Authority from the owner.

e) Market Rate Tenants. With respect to developments for which a conditional commitment letter to finance the original principal amount of the mortgage loan was issued prior to August 9, 1984, upon initial occupancy of a dwelling unit in a development financed under the program, persons and families who will not be subsidized or who will not occupy a subsidized unit shall not have an annual income in excess of seven times the annual rent, without taking into consideration any subsidy, applicable to the dwelling unit to be occupied by such Tenant.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.703 Commercial Facilities

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a) Facilities. The Owner shall rent commercial facilities, if any, only to such Commercial Tenants, at such rentals, and for such purposes as have been approved by the Authority. In approving commercial facilities and Commercial Tenants, the Authority shall consider the Tenant Selection Plan; the Marketing Plan; the Management Plan; the nature of the prospective business; the credit history of the prospective Commercial Tenant; the benefit of the prospective business to Tenants of the Development; the prospective Commercial Tenant's ability to comply with applicable licensing and zoning requirements; the purposes of the Program; and any other relevant matters.

b) Compliance. The Owner shall be responsible for ensuring the Commercial Tenant's compliance with all applicable ordinances, zoning codes, licensing requirements, regulations, statutes, and Authority Rules and agreements.

(Source: Amended at Ill. Reg. _____, effective _____)

SUBPART H: RATE OF RETURN ON EQUITY FOR LIMITED-PROFIT ENTITIES

Section 310.801 Statutory Authorization

Pursuant to Paragraph 308 of the Illinois Housing Development Act, the Authority is required to establish the owner's equity on each mortgage loan provided to a limited-profit entity at the time of final mortgage disbursement. The statute Act provides that the maximum rate of return on owner's equity is shall be 6% unless the Authority, pursuant to these rules, establishes criteria by which a higher rate is fixed established. It is the purpose of these rules this Subpart to set the criteria under by which a rate of return higher than 6% will be paid established.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.802 Developments Eligible for Increased Rate of Return

a) Any developments for which the Authority has issued a conditional commitment letter effective on or after August 9, 1984 is eligible for the establishment of an alternate Basic Rate of Return in excess of 6% if, it is determined by either, (i) the Director or, in his absence, the Deputy Director determine it to be necessary in order to attract private enterprise to construct, rehabilitate operate and maintain housing for low and moderate income persons. The standard or test for determining whether a higher rate of return is necessary is but for the higher rate of return would private enterprise acquire, construct, rehabilitate, operate and maintain housing

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for low and moderate-income persons. In making this determination, the Director or, in his absence, the Deputy Director shall consider but not be limited to the competing market interest rates, the alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs. The decisions throughout this Subpart-H regarding the increased rate of return on equity shall be made by the Director or Deputy Director. In the event that there is a disagreement between the Director and the Deputy Director, the decision determining the rate of return shall prevail. (i) or (ii) the Authority determines, pursuant to resolution of its members, that an increase in the basic rate of return is necessary to preserve the Development as affordable for persons or families of low and moderate income or that the increase provides for the creation of additional units of housing affordable to persons or families of low and moderate income in the Development or otherwise in the State. It shall be a condition to an increase in the basic rate of return pursuant to subsection 310.802(a)(ii) that, (1) the Authority give its prior written consent to any increase in the rental charges for the Development, and (2) the Authority determine, in its sole discretion, that, (a) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 above for the subsequent five years, and (b) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.

b) If the Authority makes a determination pursuant to subsection 310.802(a)(ii) above, then, prior to the Authority increasing the basic rate of return, the Authority shall require that the Owner execute an agreement evidencing the increase in the basic rate of return and containing the Owner's agreement either to preserve the Development as affordable for persons or families of low and moderate income for the full term of the Mortgage Loan or increase the number of units affordable to persons or families of low and moderate income.

c) Any increase in the basic rate of return approved pursuant to this Section shall conform with any relevant federal statutes, rules or regulations.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.803 No Retroactive Adjustments

a) Developments for which the Authority has issued a conditional commitment letter effective prior to August 9, 1984 are not

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eligible for an alternate Basic Rate of Return in excess of 6%, unless (i) the Development is a troubled Development as determined by the Director or, in his absence, the Deputy Director. A "troubled Development" for purposes of this Section is one for which a delinquency of more than sixty days exists for replacement reserve, tax and insurance reserve, or principal or interest payments and/or an Alternate Basic Rate of Return is necessary, as determined by the Director or, in his absence, the Deputy Director, to encourage a new Owner to acquire the Development, or to encourage an existing Owner to invest monies into the Development, or to assist an existing Owner to meet its financial obligations. In regard to the delinquencies, it would have to be established to the satisfaction of the Director or, in his absence, the Deputy Director, that the increase in the rate of return is essential for the Development meeting to meet these delinquency obligations. The standard ex-test-is to be applied shall be that but for the increased rate of return the Development would not be able to make these past due payments current. In making the determination whether one or more delinquencies exist, the Director or, in his absence, the Deputy Director shall consider, but not be limited to, an examination of all books and records the Authority has in regard to the delinquencies as well as all documentation submitted by or on behalf of the Development, and anticipated rents, debt service, utilities, taxes and other expenses of the Development; or (ii) the Authority determines, pursuant to resolution of its Members, that an increase in the basic rate of return is necessary to preserve the Development as affordable for persons or families of low and moderate income or that the increase provides for the creation of additional units of housing affordable to persons or families of low and moderate income in the Development or otherwise in the State. It shall be a condition to an increase in the basic rate of return pursuant to subsection 310.803(ii) that (1) the Authority give its prior written consent to any increase in the rental charges of the Development and (2) the Authority determine, in its sole discretion, that (a) the Reserve Fund for Replacements is sufficient to pay the costs set forth in Section 310.405 above for the subsequent five years, and (b) the amount needed to complete any deferred maintenance on the Development is less than one year's funding requirement for the Reserve Fund for Replacements.

b) In regard to an Alternate Basic Rate of Return to encourage a new Owner to acquire the Development, it would have to be established to the satisfaction of the Director or, in his absence, the Deputy Director that but for the increase in the rate of return, a new Owner could not be found to acquire the

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development. In making this determination the Director or, in his absence, the Deputy Director shall consider but not be limited to competing market interest rates, alternative lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs.

- c) If the Authority makes the determination pursuant to subsection 310.803(a)(ii) above, the Authority, prior to increasing the basic rate of return pursuant to subsection 310.803(a)(ii) above, shall require that the Owner execute an agreement evidencing the increase in the rate of return and containing the Owner's agreement either to preserve the Development as affordable for persons or families of low and moderate income for the full term of the Mortgage Loan or to increase the number of units affordable to persons or families of low and moderate income.

- d) Any increase in the basic rate of return approved pursuant to this Section shall conform with any relevant Federal statutes, rules or regulations.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 310.804 Calculation of Alternate Basic Rate of Return

- a) In lieu of a rate of return of 6% paid on owner's equity, For Developments which are eligible for an alternate basic rate of return in excess of 6% pursuant to Section 310.802(a)(i) or 310.803(a)(i) above, the Authority may establish an Alternate Basic Rate of Return in an amount not to exceed, except as provided in Section 310.805 below, two hundred percent of the yield paid on 30-year Government National Mortgage Association (GNMA) mortgage certificates as of the date of the Conditional Commitment Letter to that project Development. In order for an Alternate Basic Rate of Return higher than 6% to be approved, it would have to be established to the satisfaction of the Director or, in his absence, the Deputy Director that, but for the increase in the rate of return, private enterprise would not be attracted to acquire, construct, rehabilitate, operate and maintain the development. The Authority will establish an Alternate Basic Rate of Return if the Director or, in his absence, the Deputy Director determines and certifies that but for a higher rate of return private enterprise would not acquire, construct, rehabilitate, operate and maintain housing for low and moderate-income persons. In making the determination and certification whether an Alternate Basic Rate of Return will be approved and in determining and certifying the amount of the rate increase, the Director or, in his absence, the Deputy

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Director shall consider, but not be limited to, the competing market interest rates, alternative lending sources, financial projections based upon anticipated rents, debt service, taxes, utilities and other expenses and the comparative severity of the housing needs. Such Alternate Basic Rate of Return shall be established as of the last day of the calendar month preceding the month during which the Conditional Commitment Letter is issued for the development by the Authority. The Chief Fiscal Officer of the Authority shall certify to the GNMA rate as of the date of the conditional commitment letter, and the rate shall be fixed at that level.

- b) An Alternate Basic Rate of Return higher than 6% will be established for a development only if the Director or Deputy Director certifies that establishment of a higher rate of return is consistent with attracting private enterprise to acquire, construct, rehabilitate, operate and maintain the development. The Chief Fiscal Officer of the Authority shall certify to the GNMA rate as of the date of the Conditional Commitment Letter, and the rate shall be fixed at that level. The decision to certify will be made by either the Director or Deputy Director if there is a disagreement between the Director and Deputy Director. The decision of the Director shall prevail in order for an Alternate Basic Rate of Return higher than 6% to be approved. It would have to be established to the satisfaction of the Director or Deputy Director that but for the increase in the rate of return private enterprise would not be attracted to acquire, construct, rehabilitate, operate and maintain the development. In making this determination, and in determining the amount of such increase, the Director or Deputy Director shall consider but not be limited to the competing market interest rates, the alternate lending sources, financial projections based upon anticipated rents, debt service, utilities, taxes and other expenses and the comparative severity of the housing needs.

- b) For Developments which are eligible for an alternate basic rate of return in excess of 6% pursuant to Sections 310.802(a)(ii) or 310.803(a)(ii) above, the Authority may establish an annual alternate basic rate of return which shall not exceed, except as provided for in Section 310.805 below, two hundred percent of the yield paid on 30-year GNMA mortgage certificates as of December 1st of the year for which the alternate basic rate of return is to be applied. The Chief Fiscal Officer of the Authority shall certify to the GNMA rate as of December 1st of the year for which the alternate basic rate of return is to be applied and the rate shall be fixed at that level.

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- c) Any increase in the basic rate of return approved pursuant to this Section shall conform with any relevant Federal statutes, rules or regulations.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.805 Risk Premium for Special Needs

In addition to the increase to the Alternate Basic Rate of Return established pursuant to Sections 310.802 and 310.804, the Authority through its Director or, in his absence, the Deputy Director will may establish additional incentives in the form of additional return on equity in excess of the Alternate Basic Rate of Return if the criteria specified in subsections a), b) and c) below are met and if it is determined that the Alternate Basic Rate of Return is necessary. Such additional return will be limited to one additional percentage point of return on owner's equity to be paid for each of the following factors:

- a) An additional 1% return shall be allowed for each additional 5% low income tenant occupancy above the limits set forth in Section 103(b)(4) of the Internal Revenue Code (26 U.S.C.103(b)(4)(1984));
- b) Provision of housing for a special housing need, such as elderly facilities, handicapped facilities, or other qualified special needs, as specified in the Illinois Housing Development Authority Act, approved by the Director or, in his absence, the Deputy Director;
- c) Location of a the development within a specially designated Targeted Area (as defined by the U. S. Department of the Treasury under Section 6a.103A-2(b)(5) of the Treasury Regulations issued under 103(b)(4) of the Internal Revenue Code of 1954 (26 CFR 6a. 103A-2(b)(5)(1984)) and 47 Ill. Adm. Code 220.103 or within a State of Illinois Enterprise Zone established pursuant to Ill. Rev. Stat., 1983, ch. 67-1/2, pars. 601 et seq.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.806 Increases in the Basic Rate of Return

- a) The Basic Rate of Return shall not be increased or decreased during the term of the mortgage, except as provided under in Sections 310.802, Section 310.803, Section 310.804 and through Section 310.805, inclusive.

- b) In the event of an increase to the mortgage amount is made by the Authority during the term of the initial mortgage, the basic

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rate of return initially established as of the date of the Conditional Commitment Letter shall remain unchanged.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

SUBPART 1: ENERGY EFFICIENCY STANDARDS FOR NEW AND REHABILITATED DEVELOPMENTS

Section 310.901 Statutory Authorization

Pursuant to Section 7.24e of the Illinois Housing Development Act, Ill. Rev. Stat., 1984 Supp., ch. 67-1/2, par. 307-24(e), the Illinois Housing Development Authority (the "Authority") is required to establish rules governing minimum energy efficiency standards in developments financed by the Authority. It is the purpose of this subpart to set forth those minimum energy standards. After July 1, 1986, no conditional commitment for assisted mortgage financing shall be made by the Authority for any new or rehabilitated development unless the Director or, in his absence, the Deputy Director of the Authority certifies compliance with the minimum energy efficiency standards set forth herein. Compliance shall be certified when all proposed construction documents comply with this Part. Unless otherwise stated herein, the same standards apply to both new and rehabilitated developments.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 310.902 Definitions

As used in this Part subpart, the following words or terms mean:

"A.A.N.A.": Architectural Aluminum Manufacturers Association.

"A.H.A.M.": Association of Home Appliance Manufacturers.

"A.N.S.I.": American National Standards Institute.

"A.R.I.": Air Conditioning and Refrigeration Institute.

"A.S.H.R.A.E.": The American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. as computed by the procedures set forth in the ASHRAE Handbook and Product Directory Systems Volume (1976).

"A.S.T.M.": American Society for Testing and Materials.

"BTU": (British Thermal Unit) is the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

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"COP": (Coefficient of Performance - Heating) This is the ratio of the rate of net heat output by the heat pump to the rate of total on-site energy input to the heat pump, expressed in consistent units and under designated rating conditions.

"EER": (Energy Efficiency Ratio) is the ratio of net equipment cooling capacity in BTU per hour, to total rate of electric input in watts, under designated operating conditions.

"H.D.D.": (Heating Degree Day) is a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter as computed in the procedures set forth in the ASHRAE Handbook and Product Directory, Systems Volume (1976).

"H.V.A.C.": Heating, Ventilating and Air Conditioning.

"High Rise Building": is a building which is eighty feet or more above grade.

"Low Rise Building": is a building which is less than eighty feet above grade.

"N.E.C.": National Electrical Code.

"Northern Illinois": is that portion of the State of Illinois north of the southern boundaries of the Illinois counties of Vermilion, Champaign, Piatt, DeWitt, Logan, Menard, Cass, Brown and Adams.

"R-Value": (Assembly Insulation Value) is defined as thermal resistance, i.e. the reciprocal of thermal conductance as set forth in ASHRAE Standard 90A-1980.

"Southern Illinois": is that portion of the State of Illinois south of the southern boundaries of the Illinois counties of Vermilion, Champaign, Piatt, DeWitt, Logan, Menard, Cass, Brown and Adams.

"U.I.": Underwriters Laboratories located at 333 Pfingsten Road, Northbrook, Illinois 60062.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

Section 310.913 Rehabilitation Waiver

The Authority shall waive compliance with the minimum energy efficiency standards for a rehabilitation development if the Director or Deputy

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Director determines that any of the following conditions exist:

a) Prior to the issuance of an initial commitment, funds have been expended on planning, designing, architecture, engineering or purchase of the building before the effective date of the minimum energy efficiency standards and but for the waiver of compliance, the owner and/or developer would not proceed to rehabilitate the development;

ba) The owner and/or developer submits a cost benefit analysis which demonstrates that compliance with minimum energy efficiency standards would increase the costs of the rehabilitation of the development to the extent that it would be impossible for the development to meet the costs of debt service and operating expenses while providing housing at low and moderate rentals as those terms are defined in Sections 2(i) and (h) of the Illinois Housing Development Act, (Ill. Rev. Stat., 1984 Supp., ch. 67 1/2, pars. 302(f) and (4)), provided further that, and the Director or, in his absence, the Deputy Director certifies that there is a serious shortage of decent, safe and sanitary housing available to person of low and moderate income in that community and that but for the waiver of compliance, the property would not be rehabilitated; or

eb) To the extent that the minimum energy efficiency standards are in conflict with the energy efficiency requirements, rules, regulations, practices or procedures of any federal, state or local governmental entity through which a grant, loan, subsidy, insurance, underwriting or guarantee is provided for the rehabilitation of a development by any such entity; or

ec) To the extent that the minimum energy efficiency standards are in conflict with any federal, state or local law, code or ordinance; or

d) The Development does not meet the specific energy efficiency standards set forth above, but a licensed architect, acceptable to the Authority, certifies to the Authority that the Development meets standards which are functionally equivalent to the specific energy efficiency standards of this subpart.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

DEPARTMENT OF LABOR

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Americans With Disabilities Act Grievance Procedure
- 2) Code Citation: 56 Ill. Adm. Code 120
- 3) Section Numbers:
- | | |
|---------|-------------|
| 120.100 | New Section |
| 120.110 | New Section |
| 120.120 | New Section |
| 120.130 | New Section |
| 120.140 | New Section |
| 120.150 | New Section |
| 120.160 | New Section |
| 120.170 | New Section |
- Proposed Action:
- 4) Statutory Authority: Implementing the U.S. Constitution, Title II of the 1990 Americans With Disabilities Act (42 U.S.C. 12101 et seq.).
- 5) A complete description of the Subjects and Issues Involved:
To implement the 1990 Americans With Disabilities Act as mandated by the U.S. Constitution.

- 6) Will this proposed rule replace an emergency rule currently in effect? No

- 7) Does this rule contain an automatic repeal date? No

- 8) Does this proposed rule contain incorporation by reference? No

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: To establish a grievance procedure to resolve grievances asserted by qualified individuals with disabilities.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be directed to:

Mr. Glenn Alexander, Personnel Officer
Illinois Department of Labor
310 South Michigan Avenue, 10th Floor
Chicago, Illinois 60604
(312)793-1811

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12) Initial Regulatory Flexibility Analysis:

- A) Date rules were submitted to the Business Assistance Office of the Department of Commerce and Community Affairs:
- B) Types of small businesses affected:
- C) Reporting, bookkeeping or other procedures required for compliance:
- D) Types of professional skills necessary for compliance:

The full text of the Proposed Rule(s) begins on the next page.

**TITLE 56: LABOR AND EMPLOYMENT
CHAPTER I: DEPARTMENT OF LABOR**

**PART 120
AMERICANS WITH DISABILITIES
ACT GRIEVANCE PROCEDURE**

Section 120.100	Purpose
120.110	Definitions
120.120	Grievance Procedure - Level I
120.130	Grievance Procedure - Level II
120.140	Grievance Procedure - Level III
120.150	Record Maintenance
120.160	Accessibility
120.170	Precedent

AUTHORITY: Implementing the U.S. Constitution, Title II of the 1990 Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

SOURCE: Adopted at _____ Ill. Reg. _____, effective _____.

Section 120.100 Purpose

- a) To establish a grievance procedure to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the Americans With Disabilities Act or its regulations to understand the rights, privileges, and remedies afforded by it, please contact the Designated Coordinator.

Section 120.110 Definitions

The following definitions shall apply for the purpose of these regulations:

"Act" means the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

"Complainant" is an individual with a disability who files a Grievance Form specifically provided by this Department under this Procedure.

"Designated Coordinator" means a person(s) appointed by the Director who is/are responsible for the coordination of efforts of the Department to comply with and carry out its responsibilities under Title II of the Act including investigation of grievances filed by complainants.

"Department" means the Illinois Department of Labor.

"Director" means the Director of the Illinois Department of Labor and/or his/her designated representative.

"Grievance" is any complaint under the Act by an individual with a disability who meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Department; and believes he or she has been excluded from participation in, or denied the benefits of any program, service or activity b the Department or has been subject to discrimination by the Department.

Section 120.120 Grievance Procedure - Level I

The guidelines for filing a grievance at Level I shall be as follows:

- 1) Within 180 days after the alleged discrimination, an individual shall submit a formal written grievance to the Designated Coordinator
- 2) Such grievance shall be submitted on the prescribed Department Grievance Form and must be complete.
- 3) The Designated Coordinator and his/her representative shall investigate the grievance and shall make reasonable efforts to resolve the grievance.
- 4) Within 20 days after receipt of the Grievance Form, the Designated Coordinator shall provide a written response to the complainant and Director.

Section 120.130 Grievance Procedure - Level II

- 1) If the grievance has not been resolved at Level I, within 5 business days of the Designated Coordinator's response, the complainant shall:

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- a) submit a copy of the Grievance Form and Designated Coordinator's response to the Director and
 - b) submit a short written statement explaining the reason(s) for dissatisfaction with the response.
2. The Director shall appoint a 3-member panel to review the grievance at Level II. The Designated Coordinator shall not be a member of the panel. One member so appointed shall be designated chairperson.
3. The complainant and/or his/her designated representative shall be afforded an opportunity to appear before the panel.
4. The panel shall review the Designated Coordinator's written response. The panel may conduct interviews and seek advice as it deems appropriate.
5. Upon concurrence, the panel shall within ten (10) working days in writing, make recommendations to the Director as to proper resolution of the grievance.
- a. Recommendations shall include the reasons for such recommendations and bear the signature of concurring panel members.
 - b. A dissenting member of the panel may make a written and signed recommendation to the Director.

Section 120.140 Grievance Procedure - Level III

Upon receipt of recommendation from the panel, the Director shall, within five (5) working days, approve, disapprove or modify the decision.

The Director shall:

- a. state the reasons for the decision;
- b. serve the decision upon the parties; and
- c. if disapproving or modifying the Panel's recommendations, include written reasons for such disapproval or modification.

The Decision of the Director shall be final.

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Section 120.150 Record Maintenance

The Grievance Form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the recommendations of the panel and the decision of the Director shall be maintained in accordance with the State Records Act (Ill. Rev. Stat. 1991, Ch. 116, par. 43.3 et seq.), or as required by law.

Section 120.160 Accessibility

The Department shall ensure that all stages of the Procedure are readily accessible and usable by individuals with disabilities.

Section 120.170 Precedent

Factors considered in each case will be unique and the termination of a grievance at any level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complaints will be decided.

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- 1) Heading of the Part: Americans With Disabilities Act Grievance Procedure

- 2) Code Citation: 32 Ill. Adm. Code 210

- 3) Section Number:
- | | |
|--------|-------------------------|
| 210.10 | <u>Proposed Action:</u> |
| 210.20 | New Section |
| 210.30 | New Section |
| 210.40 | New Section |
| 210.50 | New Section |
| 210.60 | New Section |
| 210.70 | New Section |

- 4) Statutory Authority: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II regulations (28 CFR 35.107), and authorized by Section 4 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1004).

- 5) A Complete Description of the Subjects and Issues Involved: This proposed rule will establish, within the Department of Nuclear Safety, a procedure whereby qualified persons with disabilities may resolve allegations of denial of public services on the basis of disability. These procedures are required by the Americans With Disabilities Act of 1990.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed rule contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: The requirements imposed by the proposed rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

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- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Lyle Black
Staff Attorney
Department of Nuclear Safety
1035 Outer Park Drive
Springfield, Illinois 62704
(217) 524-0770 (voice)
(217) 785-9900 (TDD)

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 28, 1992

- B) Types of small businesses affected: The Department believes that the grievance procedure set forth in this Part imposes no direct impact on any small business as defined by Section 3.10 of the Administrative Procedures Act.

- C) Reporting, bookkeeping or other procedures required for compliance: No reporting, bookkeeping, or other procedures would be required for compliance.

- D) Types of professional skills necessary for compliance: No particular professional skills are necessary for compliance.

The full text of the Proposed Rules begins on the next page:

CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY
SUBCHAPTER a: ADMINISTRATIVE HEARING RULES

TITLE 32: ENERGY
CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY
SUBCHAPTER a: ADMINISTRATIVE HEARING RULES

PART 210
AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section	Purpose
210.10	Definitions
210.20	Procedure
210.30	Designated Coordinator Level
210.40	Final Level
210.50	Accessibility
210.60	Case-by-Case Resolution
210.70	

AUTHORITY: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in title II regulations (28 CFR 35.107), and authorized by Section 4 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1004).

SOURCE: Adopted at Ill. Reg. _____, effective _____.

Section 210.10 Purpose

- a) This Part establishes an Americans With Disabilities Act Grievance Procedure (Procedure) pursuant to the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (ADA), and specifically Section 35.107 of the Title II regulations (28 CFR 35.107) requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Any individual desiring to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, may do so by contacting the Designated Coordinator. This Part shall govern the Department of Nuclear Safety (Department) proceedings of any such grievance under the ADA.
- b) In general, the ADA requires that each program, service, and activity offered by the Department, when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intent of the Department to foster open communication with all individuals requesting ready access to programs, services and activities. The Department encourages supervisors of

programs, services and activities to respond to requests for modifications before they become grievances.

Section 210.20 Definitions

"Complainant" is an individual with a disability who files a grievance form provided by the Department in accordance with this Part.

"Designated Coordinator" is the person appointed by the Department Director to coordinate the Department's efforts to comply with and carry out its responsibilities under Title II of the ADA, including investigation of grievances filed by complainants. The Designated Coordinator for the Department is the Department's Personnel Manager. The Personnel Manager can be contacted at the Department's central office located at 1035 Outer Park Drive, Springfield, Illinois 62704, or by telephone at (217) 785-9904 (voice) or (217) 785-9900 (TDD).

"Director" means the Director of the Department of Nuclear Safety.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

"Grievance" is any complaint under the ADA by an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of the benefits of a program, activity or service offered by the Department, and who believes he or she has been excluded from participation in or denied the benefits of any program, service or activity of the Department, or has been subject to discrimination by the Department in violation of the ADA.

"Qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department.

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Section 210.30 Procedure

- a) Grievances shall be submitted in accordance with the procedures established in Sections 210.40 and 210.50 of this Part, in the form and manner described, and within the specified time limits. Time limits established in this Part are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the reviewer at the Designated Coordinator and Final Levels.
- b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure, within the specified time limits shall mean that the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure.
- c) The Department shall, upon being informed of an individual's desire to file a formal grievance, instruct the individual how to receive a copy of this procedure and the grievance form.

Section 210.40 Designated Coordinator Level

- a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged exclusion, denial, or discrimination, submit the grievance to the Designated Coordinator in writing on the grievance form prescribed by the Department for that purpose.
- b) Upon request by the complainant, the Department shall provide assistance to the complainant in completing the grievance form.
- c) The Designated Coordinator, or his/her representative, shall investigate the grievance and shall make reasonable efforts to resolve the grievance. Within ten (10) business days after receipt of the grievance form, the Designated Coordinator shall provide a written response to the complainant and a copy thereof to the Director.

Section 210.50 Final Level

- a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may, within five (5) days after receipt by the complainant of the Designated Coordinator's response, submit a copy of the grievance form and Designated Coordinator's written response to the Director of the Department for final review. The

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complainant shall submit these documents to the Director, together with a short written statement explaining the reason(s) for dissatisfaction with the Designated Coordinator's written response.

- b) The complainant shall be afforded an opportunity to appear before the Director or the Director's designee. The complainant shall have a right to appoint a representative to appear on behalf of the complainant. The Director or designee shall review the Designated Coordinator's written response and may conduct interviews and seek advice as the Director or designee deems appropriate.
- c) If the Director appoints a designee for the procedure under subsection (b) above, the designee shall present both his/her findings and the written response of the Designated Coordinator to the Director.
- d) The Director shall approve, disapprove or modify the recommendation(s) of the Designated Coordinator. Within thirty (30) days of receiving the statement of dissatisfaction under subsection (a) above, the Director shall render a decision thereon in writing, stating the basis for the decision and shall cause a copy of the decision to be served on the complainant and the Designated Coordinator. If the Director disapproves or modifies the recommendation(s) contained in the written response of the Designated Coordinator, the Director shall include in the written decision reasons for such disapproval or modification. The Director's decision shall be final.
- e) The Department shall maintain the grievance form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the findings of the Director's designee, if any, and the Director's written decision in accordance with the State Records Act (Ill. Rev. Stat. 1989, ch. 116, par. 43.3 et seq.) or as otherwise required by law.

Section 210.60 Accessibility

The Department shall ensure that all stages of the grievance procedure are readily accessible to and usable by individuals with disabilities.

Section 210.70 Case-by-Case Resolution

- a) Each grievance involves a unique set of factors which include, but are not limited to:

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- 1) the specific nature of the disability;
 - 2) the essential eligibility requirements; the benefits to be derived, and the nature of the service, program or activity at issue;
 - 3) the health and safety of others; and
 - 4) whether or not an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Department.
- b) Accordingly, termination of a grievance at any level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.

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- 1) Heading of the Part: Americans With Disabilities Act Grievance Procedure
- 2) Code Citation: 68 Ill. Adm. Code 1130
- 3) Section Numbers:

	<u>Proposed Action:</u>
1130.10	New Section
1130.20	New Section
1130.30	New Section
1130.40	New Section
1130.50	New Section
1130.60	New Section
1130.70	New Section
- 4) Statutory Authority: Americans With Disabilities Act of 1990, 42 USC Section 12101 et seq., ("ADA") and specifically Section 35.107 of the Title II regulations, 28 CFR Part 35.
- 5) A Complete Description of the Subjects and Issues Involved:

This rulemaking establishes a grievance procedure required by the Act to resolve grievances asserted by qualified individuals with disabilities.

The rules explain who may file a grievance and guide a complainant through the steps necessary to proceed to a resolution.
- 6) Will these proposed amendments replace an emergency Rule currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed Rules pending on this Part? No
- 10) Statement of Statewide Policy Objectives (if applicable):

This rulemaking has no effect on local governments.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Interested Persons may submit written comments and views to:

Department of Professional Regulation
 Attention: Jean A. Courtney
 320 West Washington, 3rd Floor
 Springfield, IL 62786
 217/785-0800

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 24, 1992.
- B) Types of small businesses affected: Businesses hiring people from professions regulated by the Department of Professional Regulation could be affected, depending upon their hiring practices concerning the disabled.
- C) Reporting, bookkeeping or other procedures required for compliance:
The Department will provide the complainant with a Grievance Form to fill out along with a copy of procedures for filing the form.
- D) Types of professional skills necessary for compliance:
No special skills are required for compliance.

The full text of the Proposed rules begins on the next page:

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION
SUBCHAPTER a: ADMINISTRATIVE RULES

PART 1130

AMERICANS WITH DISABILITIES ACT
GRIEVANCE PROCEDURE

Section	Purpose
1130.10	Definitions
1130.20	Procedure
1130.30	Designated Coordinator Level
1130.40	Final Level
1130.50	Accessibility
1130.60	Case-by-case Resolution
1130.70	

AUTHORITY: Implementing the Americans With Disabilities Act of 1990 (42 USC Section 12101 et seq.) and Section 35.107 of Title II (28 CFR Part 35).

SOURCE: Adopted at 16 Ill. Reg. _____, effective _____.

Section 1130.10 Purpose

- a) This ADA Grievance Procedure ("Procedure") is established pursuant to the Americans With Disabilities Act of 1990, 42 USC Section 12101 et seq. ("ADA") and specifically Section 35.107 of the Title II regulations, 28 CFR Part 35, requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator of the Department of Professional Regulation (the "Department"), 320 W. Washington, Springfield, Illinois 62786.
- b) In general, the ADA requires that each program, service and activity offered by the Department, when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of the Department to foster open communication with all individuals requesting readily accessible programs, services and activities. The Department encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

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Section 1130.20 Definitions

- a) Who May File a Grievance. Any individual with a disability may file a grievance with the Department if the individual:
 - 1) meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Department; and
 - 2) believes he/she has been excluded from participation in or denied the benefits of any program, service or activity of the Department or has been subject to discrimination by the Department.
- b) "Complainant" is an individual with a disability who files a Grievance Form provided by the Department under this procedure.
- c) "Designated Coordinator" is the person(s) appointed by the Director of the Department (the "Director") who is/are responsible for the coordination of efforts of the Department to comply with and carry out its responsibilities under Title II of the ADA including investigation of grievances filed by complainants. (See 28 CFR 35.107).

Section 1130.30 Procedure

- a) The Department shall, upon being informed that an individual desires to file a formal grievance, instruct the individual how to receive a copy of this Procedure and the Grievance Form.
- b) Grievances must be submitted in accordance with the steps and time limits set forth in Section 1130.40 and 1130.50. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the Designated Coordinator.
- c) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits shall mean that the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure as the Department's last response.

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Section 1130.40 Designated Coordinator Level

- a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the Grievance Form. The Grievance Form must be completed in order to receive proper consideration by the Designated Coordinator.
- b) Upon request, assistance shall be provided by the Department to complete the Grievance Form.
- c) The Designated Coordinator, or his/her representative, shall investigate the grievance and shall make (reasonable) efforts to resolve the grievance at this level. The Designated Coordinator shall provide a written response to the complainant and the Director within ten (10) business days after receipt of the Grievance Form.

Section 1130.50 Final Level

- a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Director for final review. The complainant shall submit these documents to the Director, together with a short written statement explaining the reason(s) for dissatisfaction with the Designated Coordinator's written response, within five (5) business days after receipt by the complainant of the Designated Coordinator's response.
- b) The Director shall appoint a 3-member panel to review the grievance at the Final Level. One member shall be designated as chairman.
- c) The complainant shall be given an opportunity to appear before the panel. The complainant shall have a right to appoint a representative to appear on his/her behalf. The panel shall review the Designated Coordinator's written response, conduct interviews and seek advice as it deems appropriate.
- d) Upon reaching a majority decision, the panel shall make a recommendation in writing to the Director as to the proper resolution of the grievance. All recommendations shall include reasons for the recommendations and shall be signed by the members concurring in the majority decision. A dissenting member of the panel may make a recommendation to the Director in writing and shall also sign such recommendation.

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- e) Upon receipt of the recommendation from the panel, the Director shall approve, disapprove or modify the panel recommendations, shall render a decision in writing, shall state the basis for the decision and shall send a copy of the decision to the complainant. The Director's decision shall be final. If the Director disapproves or modifies the Panel's recommendations, the Director shall include written reasons for such disapproval or modification.
- f) The Grievance Form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the recommendations of the panel and the decision of the Director shall be maintained in accordance with the State Records Act, Ill. Rev. Stat. 1989, ch. 116, par. 43.3 et seq., or as otherwise required by law.

Section 1130.60 Accessibility

The Department shall ensure that all stages of the Procedure are readily accessible to and usable by individuals with disabilities.

Section 1130.70 Case-by-case Resolution

Each grievance involves a unique set of factors which include but are not limited to: the specific nature of the disability; the essential eligibility requirements; the benefits to be derived; the nature of the service, program or activity at issue; the health and safety of others; and, whether or not an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Department. Accordingly, termination of a grievance at any level, whether through the granting of relief or otherwise, shall not constitute a precedent on which any other complainants should rely.

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

1) Heading of Part:

Hospital Licensing Requirements

2) Code Citation:

77 Ill. Adm. Code 250

3) Section Numbers:

250.2720

New Section

4) Statutory Authority:

Hospital Licensing Act

Ill. Rev. Stat. 1989 and 1990 Supp., ch. 111 1/2, par. 142 et seq.

5) A Complete Description of the Subjects and Issues Involved:

These proposed amendments to the rules governing the licensure of hospitals add new provisions on day care programs for mildly ill children. The proposed new provisions, which are being added as Section 250.2720, are intended to implement a recent change in the Hospital Licensing Act which was enacted as Public Act 86-1461, effective July 1, 1991. This change allows hospitals to establish day care programs for mildly ill children and requires the Department to establish standards for the operation of these programs.

A number of hospitals have established day care programs in response to needs of their community and employees. These day care programs are subject to the requirements established by the Department of Children and Family Services. Since the requirements for normal day care programs exclude children who are ill, an increasing number of hospitals have created special day care programs which are specifically designed to provide care for these mildly ill children who are excluded from their normal day care program.

Prior to the enactment of Public Act 86-1461, the Department has applied the requirements for in-patient pediatric units to these programs for mildly ill children operated by hospitals. These proposed amendments to the hospital licensure rules will provide more appropriate and less restrictive standards for these programs. The proposed amendments include requirements for the admission of children to the

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program, health evaluations, activities, administration of medication, records, emergency medical treatment, and related issues. The proposed amendments were developed in cooperation with the Hospital Licensing Board.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect. The Department anticipates adoption of this rulemaking approximately six to nine months after the publication of this notice in the *Illinois Register*.

- 6) Will these Proposed Amendments Replace an Emergency Rule Currently in Effect? No.
- 7) Does this Rulemaking contain an Automatic Repeal Date? No.
- 8) Do these Proposed Amendments Contain Incorporations By Reference? No.
- 9) Are there any other Proposed Amendments Pending on this Part? No.
- 10) Statement of Statewide Policy Objectives:

This rulemaking neither creates nor expands a state mandate.

- 11) Time, Place, and Manner in which Interested Persons May Comment on this Proposed Rulemaking:

Interested persons may present their comments concerning these rules by writing to Gail DeVito, Division of Governmental Affairs, Illinois Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761, within 45 days after this edition of the *Illinois Register*.

These rules may have an impact on small businesses. In accordance with Sections 3.01 and 4.03 of the Administrative Procedure Act, any small business may present their comments in writing to Gail DeVito at the above address.

Any small business (as defined in Section 3.10 of the Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

- A) Date Rule was Submitted to the Business Assistance Office of the Department of Commerce and Community Affairs:

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- B) Type of Small Businesses Affected:
Hospitals
- C) Reporting, Bookkeeping or Other Procedures Required for Compliance:
No additional reporting, bookkeeping or other procedures are required for compliance.
- D) Types of Professional Skills Necessary for Compliance:
No additional professional skills are necessary for compliance.

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIESPART 250
HOSPITAL LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section	
250.110	Application for and Issuance of an Initial Permit to Establish a Hospital
250.120	Application for and Issuance of a License to Operate a Hospital
250.130	Administration by the Department
250.140	Hearings
250.150	Definitions
250.160	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION AND PLANNING

Section	
250.210	The Governing Board
250.220	Accounting
250.230	Planning
250.240	Admission and Discharge
250.250	Visiting Rules
250.260	Patients' Rights
250.270	Manuals of Procedure

SUBPART C: THE MEDICAL STAFF

Section	
250.310	Organization
250.315	Supervision of House Staff Members
250.320	Admission and Supervision of Patients
250.330	Orders for Medications and Treatments
250.340	Availability for Emergencies

SUBPART D: PERSONNEL SERVICE

Section	
250.410	Organization

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250.420	Personnel Records
250.430	Duty Assignments
250.440	Education Programs
250.450	Personnel Health Requirements
250.460	Benefits

SUBPART E: LABORATORY

Section	
250.510	Laboratory Services
250.520	Blood and Blood Components
250.525	Designated Blood Donor Program
250.530	Proficiency Survey Program
250.540	Laboratory Personnel
250.550	Western Blot Assay Testing Procedures

SUBPART F: RADIOLOGICAL SERVICES

Section	
250.610	General Diagnostic Procedures and Treatments
250.620	Radioactive Isotopes
250.630	General Policies and Procedures Manual

SUBPART G: EMERGENCY SERVICES

Section	
250.710	Classification of Emergency Services
250.720	General Requirements
250.725	Notification of Emergency Personnel
250.730	Community or Area-wide Planning
250.740	Disaster and Mass Casualty Program
250.750	Emergency Services for Sexual Assault Victims

SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

Section	
250.810	Applicability of Other Parts of These Requirements
250.820	General
250.830	Classifications of Restorative and Rehabilitation Services
250.840	General Requirements for all Classifications
250.850	Specific Requirements for Comprehensive Physical Rehabilitation Services

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250.860
250.870
250.880

Medical Direction
Nursing Care
Additional Allied Health Services

SUBPART I: NURSING SERVICE AND ADMINISTRATION

Section
250.910
250.920
250.930
250.940
250.950
250.960
250.970
250.980
250.990
250.1000
250.1010
250.1020
250.1030
250.1040
250.1050
250.1060
250.1070
250.1080
250.1090
250.1100

Nursing Services
Organizational Plan
Role in hospital planning
Job descriptions
Nursing committees
Specialized nursing services
Nursing Care Plans
Nursing Records and Reports
Unusual Incidents
Meetings
Education Programs
Licensure
Policies and Procedures
Patient Care Units
Equipment for Bedside Care
Drug Services on Patient Unit
Care of Patients
Admission Procedures Affecting Care
Sterilization and Processing of Supplies
Infection Control

SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section
250.1210
250.1220
250.1230
250.1240
250.1250
250.1260
250.1270
250.1280
250.1290
250.1300

Surgery
Surgery Staff
Policies & Procedures
Surgical Privileges
Surgical Emergency Care
Operating Room Register
Surgical Patients
Equipment
Safety
Operating Room

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250.1305
250.1310
250.1320

Visitors in Operating Room
Cleaning of Operating Room
Regulations for Postoperative Recovery Facilities

SUBPART K: ANESTHESIA SERVICES

Section
250.1410

Anesthesia Service

SUBPART L: RECORDS AND REPORTS

Section
250.1510
250.1520

Medical Records
Reports

SUBPART M: FOOD SERVICE

Section
250.1610
250.1620
250.1630
250.1640
250.1650
250.1660
250.1670
250.1680

Dietary Department Administration
Facilities
Menus and Nutritional Adequacy
Diet Orders
Frequency of Meals
Therapeutic (Modified) Diets
Food Preparation and Service
Sanitation

SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

Section
250.1710
250.1720
250.1730
250.1740
250.1750
250.1760

Housekeeping
Garbage, Refuse and Solid Waste Handling and Disposal
Insect and Rodent Control
Laundry Service
Soiled Linen
Clean Linen

SUBPART O: MATERNITY AND NEONATAL SERVICE

Section
250.1810

Applicability of other Parts of these regulations

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250.1820Maternity and Neonatal Service Regulations (Perinatal Service)

250.1830General Requirements for all Maternity Departments

250.1840Discharge of Newborn Infants from Hospital

250.1850Rooming-In Care of Mother and Infant

250.1860Special Programs

250.1870Single Room Maternity Care

SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL PLANT, SITE, EQUIPMENT, AND SYSTEMS -- HEATING, COOLING, ELECTRICAL, VENTILATION, PLUMBING, WATER, SEWER, AND SOLID WASTE DISPOSAL

Section

250.1910Maintenance

250.1920Emergency electric service

250.1930Water Supply

250.1940Ventilation, Heating, Air Conditioning, and Air Changing Systems

250.1950Grounds and Buildings Shall be Maintained

250.1960Sewage, Garbage, Solid Waste Handling and Disposal

250.1970Plumbing

250.1980Fire and Safety

SUBPART Q: CHRONIC DISEASE HOSPITALS

Section

250.2010Definition

250.2020Requirements

SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

Section

250.2110Service Requirements

250.2120Personnel Required

250.2130Facilities for Services

250.2140Pharmacy and Therapeutics Committee

SUBPART S: PSYCHIATRIC SERVICES

Section

250.2210Applicability of other Parts of these Regulations

250.2220Establishment of a Psychiatric Service

250.2230The Medical Staff

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250.2240Nursing Service

250.2250Allied Health Personnel

250.2260Staff and Personnel Development and Training

250.2270Admission, Transfer and Discharge Procedures

250.2280Care of Patients

250.2290Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care

250.2300Diagnostic, Treatment and Physical Facilities and Services

SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

Section

250.2410Applicability of these Standards

250.2420Submission of Plans for New Construction, Alterations or Additions to Existing Facility

250.2430Preparation of Drawings and Specifications -- Submission Requirements

250.2440General Hospital Standards

250.2450Details

250.2460Finishes

250.2470Structural

250.2480Mechanical

250.2490Plumbing and Other Piping Systems

250.2500Electrical Requirements

SUBPART U: CONSTRUCTION STANDARDS FOR EXISTING HOSPITALS

Section

250.2610Applicability of these Standards

250.2620Codes and Standards

250.2630Existing General Hospital Standards

250.2640Details

250.2650Finishes

250.2660Mechanical

250.2670Plumbing and Other Piping Systems

250.2680Electrical Requirements

SUBPART V: SPECIAL CARE AND/OR SPECIAL SERVICE UNITS

Section

250.2710Special Care and/or Special Service Units

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250.2720Day Care for Mildly Ill Children

SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

Section

250.2810 Applicability of Other Parts of These Requirements
250.2820 Establishment of an Alcoholism and Intoxication Treatment Service
250.2830 Classification and Definitions of Service and Programs
250.2840 General Requirements for all Hospital Alcoholism Program Classifications
250.2850 The Medical and Professional Staff
250.2860 Medical Records
250.2870 Referral
250.2880 Client Legal and Human Rights

ILLUSTRATION A

Seismic Zone Map

APPENDIX A Codes and Standards (Repealed)

EXHIBIT A Codes (Repealed)

EXHIBIT B Standards (Repealed)

EXHIBIT C Addresses of Sources (Repealed)

TABLE A Measurements Essential for Level I, II, III Hospitals

TABLE B Sound Transmission Limitations in General Hospitals

TABLE C Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)

TABLE D General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)

TABLE E Piping Locations for Oxygen, Vacuum and Medical Compressed Air

TABLE F General Pressure Relationships and Ventilation of Certain Hospital Areas

TABLE G Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 142 et seq.)

SOURCE:

Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6

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Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 16 Ill. Reg. _____, effective _____.

NOTE: Capitalization denotes statutory language.

SUBPART V: SPECIAL CARE AND/OR SPECIAL SERVICE UNITS

Section 250.2720Day Care for Mildly Ill Children

a)

General Description

1) A hospital MAY PROVIDE A PROGRAM FOR THE TEMPORARY CUSTODIAL CARE OF MILDLY ILL CHILDREN in accordance with the requirements of this Section. (Section 6.1a of the Act)

2) The purpose of a day care program for mildly ill children is to provide a short-term day care alternative for children who, because of mild illness, cannot participate in their usual daily routine and whose parent or guardian cannot stay home with them.

3) Children who participate in a day care program for mildly ill children ARE NOT CONSIDERED HOSPITAL PATIENTS AND ARE NOT REQUIRED TO BE UNDER THE PROFESSIONAL CARE OF A MEMBER OF THE HOSPITAL'S MEDICAL STAFF EXCEPT IN THOSE CASES WHERE EMERGENCY MEDICAL TREATMENT IS NEEDED DURING THE TIME THE CHILD IS ON THE PROGRAM PREMISES. (Section 6.1a(b) of the Act)

Section 250.2720 (continued)

- b) For the purposes of this Section, "mildly ill" or "mild illness" means a temporary medical condition which does not require in-patient hospital treatment, but which makes a child UNABLE TO ATTEND SCHOOL, renders PARTICIPATION IN NORMAL DAY CARE arrangements impracticable, or excludes a child from attendance at a day care center or home licensed by the Department of Children and Family Services [see 89 Ill. Adm. Code 406.14, 407.18(e), 408.60(e), and 408.70(b)]. (Section 6.1a of the Act)

c) Policies and Procedures

- 1) Each hospital offering a day care program for mildly ill children shall develop written policies and procedures to govern the operation of the program. The hospital shall consider the rules of the Department of Children and Family Services on day care programs (89 Ill. Adm. Code 407) in the development of the policies and procedures.
- 2) Policies and procedures governing the registration of children into the program, the conditions under which children will be referred for medical treatment, and the provision of emergency medical treatment shall be reviewed and approved by the medical director of the program or by another physician licensed to practice medicine in all its branches.

d) Program Administration

- 1) The program shall designate a physician licensed to practice medicine in all its branches who will serve as the medical director of the program.
- 2) The program shall be supervised by a registered nurse or a physician.

e) Registration and Initial Evaluation

- 1) The program shall have a policy for the registration of mildly ill children into the program. The policy shall include at least the following requirements:
 - A) The program shall collect background information concerning the child prior to accepting a sick child into the program, including the information required under subsections (k)(1) and (2) of this Section.

Section 250.2720(e)(1) (continued)

- B) The registration procedures shall be designed to provide the program with sufficient information to enable the parent or guardian and the program staff to make decisions or act on behalf of the child while at the program.
- 2) A preliminary evaluation of the condition of the mildly ill child shall be made by a registered nurse or physician affiliated with the program before the child is brought to the program. The preliminary evaluation shall consist of the parent's or guardian's reporting the child's symptoms to the program's designated personnel by telephone. A determination shall be made at that time as to whether or not the parent or guardian may bring the child to the program for on-site evaluation.
- 3) An on-site evaluation must be performed by a physician or registered nurse affiliated with the program. The evaluation which takes place at the program premises shall include the following:
 - A) An assessment of the child's physical condition, including current medications.
 - B) An assessment of the probable contagion and risk to the health of other individuals present.
 - C) An assessment of the ability of the program to provide the services that the child requires.
- 4) The program personnel evaluating the child shall determine whether a mildly ill child may be registered.
- 5) The registration and evaluation process must be followed each day the parent or guardian wishes to register a child into the program.
- 6) Program staff must report cases of suspected child abuse and communicable disease cases in accordance with current reporting requirements of the Department (77 Ill. Adm. Code 690) and the Department of Children and Family Services (89 Ill. Adm. Code 300).

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Section 250.2720 (continued)

f) Facility and Equipment Requirements

1) A day care program for mildly ill children shall be LOCATED ON THE HOSPITAL'S LICENSED PREMISES. (Section 6.1a of the Act)

2) Programs which are located in an area where patients are also present shall meet the following requirements:

A) CHILDREN IN THE PROGRAM SHALL NOT SIMULTANEOUSLY OCCUPY THE SAME ROOM AS A HOSPITAL PATIENT. (Section 6.1a(a)(1) of the Act)

B) Rooms used for the day care program for mildly ill children shall not be intermingled with patient rooms.

C) Traffic flow patterns to the program location shall insure that program registrants do not have access to those areas of the hospital occupied by patients.

2) Toilets and handwashing sinks must be within or immediately adjacent to the room or rooms used for day care for mildly ill children.

g) Infection Control

1) The program shall have written infection control and isolation policies and procedures. The policies and procedures shall specify medical conditions which will exclude children from participation in the program. The policies and procedures shall comply with the hospital's infection control policies and shall be reviewed and approved by the individual responsible for the hospital's infection control program.

2) CHILDREN IN THE PROGRAM WHO ARE RECOVERING FROM NON-CONTAGIOUS CONDITIONS SHALL BE CARED FOR IN A ROOM SEPARATE FROM CHILDREN REGISTERED IN THE PROGRAM WHO HAVE CONTAGIOUS CONDITIONS. (Section 6.1a(b)(2) of the Act)

3) Programs which accept children with contagious conditions must separate children with different contagious conditions in accordance with the hospital's infection control policies.

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Section 250.2720(g) (continued)

4) If a hospital also operates a day care center licensed by the Department of Children and Family Services, children registered in the day care program for mildly ill children shall not simultaneously occupy the same rooms used by well children.

h) Activities

1) Each program shall provide activities which are available to children registered in the program. The activities shall take into account the educational and developmental needs of program registrants.

2) Children in the program shall be permitted to participate in activities which are appropriate to the level of illness and age of each child.

i) Food Services. Well-balanced meals and snacks must be offered at appropriate times throughout the day. Menus shall be modified to meet the individual needs of each child as necessary.

j) Medication Administration

1) Medication which is brought to the program for a child by the child's parent or guardian may be administered to the child in the program in accordance with the following requirements:

A) The program shall maintain a record of the dates, hours, dosages, and the name of the person administering the medication.

B) PRESCRIPTION MEDICATIONS SHALL BE LABELED WITH THE CHILD'S NAME, DIRECTIONS FOR ADMINISTERING THE MEDICATION, THE DATE, THE PHYSICIAN'S NAME, THE PRESCRIPTION NUMBER, AND THE DISPENSING DRUG STORE OR PHARMACY. (Section 6.1a(c)(1) of the Act)

C) ONLY CURRENT PRESCRIPTION MEDICATIONS SHALL BE ADMINISTERED BY THE PROGRAM. (Section 6.1a(c)(1) of the Act)

D) The medications shall be administered as required by the child's physician, subject to the receipt of appropriate releases from the

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Section 250.2720(j)(1)(D) (continued)

parent or guardian, which shall be on file for each child for the administration of any and all prescribed medications.

E) WRITTEN PARENTAL PERMISSION SHALL BE OBTAINED BEFORE NON-PRESCRIPTION MEDICATION IS ADMINISTERED. SUCH MEDICATION SHALL BE ADMINISTERED IN ACCORDANCE WITH PACKAGE INSTRUCTIONS. (Section 6.1a(c)(2) of the Act)

F) Medications shall be kept in locked cabinets or containers which are in an area well-lighted and out of reach of children even if medications must be refrigerated.

G) Medications shall only be administered by individuals who are authorized by the hospital's policies to administer medications as required by Section 250.2140(c)(6).

2) The requirement that no medication shall be administered except on the written order of a member of the medical staff (Section 250.330(a)) shall not apply to day care programs for mildly ill children. PROGRAM STAFF MAY ADMINISTER MEDICATION PRESCRIBED BY ANY LICENSED PROFESSIONAL WHO IS PERMITTED BY LAW TO DO SO, WHETHER OR NOT THE PROFESSIONAL IS A MEMBER OF THE HOSPITAL'S MEDICAL STAFF. (Section 6.1a(c)(1) of the Act)

k) Records. A record shall be maintained for each child registered in the program and shall include each of the following items:

1) Parent or guardian information:

A) Names, home addresses, and home telephone numbers.

B) Employers, work addresses, and work telephone numbers.

C) Telephone numbers where the parent or guardian can be reached.

D) Name, address, and telephone number of a person to be notified in an emergency, if the parent or guardian cannot be reached.

Section 250.2720(k)(1) (continued)

E) Names of persons authorized to remove the child from the program, if other than the parent or guardian.

2) Child information:

A) Name, address and telephone number.

B) Birth date.

C) Medical history, including any known allergies, any diet restrictions, and proof of immunizations.

D) Current health status.

E) Any prescription and non-prescription medications taken by the child during the previous 24 hours.

F) Any special instructions.

G) Name, address, and telephone number of the child's regular physician.

3) Signed consent forms from the parent or guardian, authorizing the program to take the following actions:

A) Care for the child in accordance with the program's policies and procedures.

B) Care for the child in accordance with any special instructions given by the parent or guardian which do not conflict with the program's policies and procedures.

C) Administer medication, including prescription and non-prescription drugs.

D) Provide emergency medical treatment.

4) Daily record for each day the child actually spends in the program, including:

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Section 250.2720(k)(4) (continued)

A) A description of the evaluation of the child at the time the child is brought to the program premises.

B) A record of the services the child received while at the program, including any medications administered.

C) Periodic assessment of the child's health status while at the program.

l) Staffing

1) The program shall develop a staffing plan which assures the safety, comfort and effective care of children during all times the program is in operation. Both the numbers and training of staff shall be included in the staffing plan.

2) A registered nurse must be available at all times the program is in operation.

3) Written job qualifications and descriptions must be prepared for all personnel involved with the program.

4) Program staff must have training in the care of ill children and in normal child development. Such training may be provided by the hospital.

5) Program staff may not provide staffing for in-patient hospital units during the time they are providing staffing in the program.

m) Emergency Medical Treatment

1) The program shall have written policies and procedures governing the provision of emergency medical treatment to children registered in the program who become seriously ill.

2) Emergency medical treatment shall be available at all times the program is open for operation.

(Source: Added at 16 Ill. Reg. _____, effective _____)

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1) Heading of the Part:

Skilled Nursing and Intermediate Care Facilities Code

2) Code Citation:

77 Ill. Adm. Code 300

3) Section Numbers:

300.110 Amendments
300.140 Amendments
300.150 Amendments
300.330 Amendments
300.630 Amendments
300.1010 Amendments
300.1220 Amendments
300.1240 Amendments
300.2070 Amendments
300.3060 Amendments
300.3100 Amendments
300.3310 Amendments
300.3710 Amendments
300.Appendix B Repealer

Proposed Action:

4) Statutory Authority:

Nursing Home Care Act

Ill. Rev. Stat. 1989 and 1990 Supp., ch. 111 1/2, par. 4151-101 et seq.

5) A Complete Description of the Subjects and Issues Involved:

The rules in Part 300 govern the licensure of long-term care facilities that provide skilled nursing and intermediate care. These proposed amendments include technical changes as well as addressing issues encountered by the Department in implementing the rules.

Section 300.110 - The Department is amending the rule to clarify and expand its policies concerning licensure for more than one level of care and licensure of distinct parts of long-term care facilities. Subsection 300.110 (h) will allow facilities to designate areas of the facility that will be licensed at different levels, provided that the conditions set forth in the rule are met. This change will allow greater flexibility in meeting the needs of residents. Distinct parts of the facility, as defined in Section 300.330, are required for licensure as Intermediate Care for the Developmentally Disabled or Long-Term Care for Under Age 22. Statutory citations are also

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being updated.

Section 300.140 - A misquotation of statutory language is being corrected. In addition, subsection (c) is being amended to delete the word "written" in regard to approval by the Department for the operator to begin operation of the facility prior to actual receipt of the license certificate.

Section 300.150 - These changes are the same as those being made in Section 300.140.

Section 300.330 - The definition of "Facility or Long-Term Care Facility" is being amended to reflect amendments to the Nursing Home Care Act made by Public Act 86-1244, effective January 1, 1991. In the definition of "Nursing Unit," the term "distinct part" is being changed to "designated area" to eliminate confusion with a distinct part as that term is defined in the rules. In addition, statutory citations are updated.

Section 300.630 - A misquotation of statutory language is being corrected, and statutory citations are being added.

Section 300.1010 - A duplication in the numbering scheme in subsection (g) is being corrected.

Section 300.1220 - The Department is deleting the requirement that a facility must have less than 50 bed capacity in order to receive approval from the Department to have two nurses share the duties of the director of nursing. Because the conditions for approval as set forth in the rule are very specific, the Department believes that any facility that meets the conditions should receive approval for the shared position, regardless of the size of the facility.

Section 300.1240 - The Department is changing the requirements concerning when a registered nurse must be on duty in a facility. Rather than being required to work the day shift, the registered nurse will be required to work 8 consecutive hours. By leaving the choice of the RN's shift to the facility, the Department will enable the facility better to meet the needs of its residents. The Department is also deleting a redundant sentence in subsection (a). The word "surveyor" is also being changed to "Department" in subsection (f) because the actions described are not necessarily performed by the surveyor.

Section 300.2070 - This Section is being amended to require that snacks be offered between meals when there are more than four hours between meals. The existing rule allows the facility to offer either between-meal or bedtime snacks.

Section 300.3060 - This Section is being amended to delete an obsolete provision and to clarify the Department's requirements governing the size of resident bedrooms. New waivers to the square footage requirements have not been granted since the date set forth in subsection (b)(1), December 24, 1987; however, the rule still refers to approval of smaller-sized rooms by the Department. Therefore, the reference to approval of multiple bed rooms of not less than 70 square

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feet per resident is being deleted. The language of subsection (b)(1) is also being clarified to refer to square feet of usable floor area, as defined in the rule.

Subsection 300.3100 - The Department is amending this Section to clarify its policies governing the presence of other businesses in buildings containing existing long-term care facilities so that the requirements will be consistent with those in Parts 330, 350 and 390 and with the requirements for new facilities in Section 300.2900.

Section 300.3310 - This Section is being amended to correct statutory language.

Section 300.3710 - An incorrect cross-reference is being corrected in subsection (b) (6).

Section 300.Appendix B - This appendix is being repealed because the Department's requirements for distinct parts are set forth in Section 300.110.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after the publication of this notice in the Illinois Register.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect?

Yes No X

7) Does this Rulemaking Contain an Automatic Repeal Date? Yes No X

If "yes," please specify the date:

8) Does this Rulemaking Contain Any Incorporations By Reference?

Yes No X

If "yes," please specify type: 6.02(a) or 6.02(b)

9) Are there any other Proposed Amendments Pending on this Part?

Yes No X

If Yes:

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Section Numbers	Proposed Action	Ill. Reg. Citation
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10) Statement of Statewide Policy Objectives:

This rulemaking neither creates nor expands a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking:

Interested persons may present their comments concerning these rules by writing to Gail M. DeVito, Division of Governmental Affairs, Illinois Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761 within 45 days after this issue of the Illinois Register.

These rules may have an impact on small businesses. In accordance with Sections 3.01 and 4.03 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 3.10 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Date Rulemaking was Submitted to the Business Assistance Office of the Department of Commerce and Community Affairs:

B) Type of Small Businesses Affected:

Skilled Nursing and Intermediate Care Facilities

C) Reporting, Bookkeeping or Other Procedures Required for Compliance:

None.

D) Types of Professional Skills Necessary for Compliance:

None.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300

SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act (Ill. Rev. Stat. 1989 and 1990 Supp., ch. 111 1/2, par. 4151-101 et seq.).

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984;

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amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency amendment March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 544, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. _____, effective _____.

NOTE: Italics and capitalization denote statutory language.

SUBPART A: GENERAL PROVISIONS

Section 300.110 General Requirements

- a) This Part applies ~~These Minimum Standards~~ apply to the operator/licensee of facilities, or distinct parts thereof, that are to be licensed and classified to provide intermediate care or skilled nursing care. Any license issued and in effect prior to March 1, 1980, pursuant to the "Nursing homes, sheltered care homes, and homes for the aged Act" (Ill. Rev. Stat. 1977, ch. 111 1/2, par. 35.16 et seq.) shall remain valid and subject to the terms and conditions of the Nursing Home Care Act (the Act) (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 4151-101 et seq. ~~as amended by Public Act 85-968, effective December 9, 1987; Public Act 85-1183, effective August 13, 1988; and Public Act 85-1378, effective September 1, 1988~~) and all regulations promulgated thereunder until the expiration date shown on the face of such license.

- b) The license issued to each operator/licensee shall designate the licensee's name, facility name, address, the classification by level of service authorized for that facility, the number of beds authorized for each level, the date the license was issued and the expiration date. Such licenses shall be issued for a period of NOT LESS THAN SIX MONTHS NOR MORE THAN 18 MONTHS. The Department will set the period of the license based on the license expiration dates of the facilities in the geographical area surrounding the facility IN ORDER TO DISTRIBUTE THE EXPIRATION DATES as evenly as possible THROUGHOUT THE CALENDAR YEAR. (Section 3-110 of the Act)

- c) An applicant may request that the license issued by the Department of Public Health (the Department) have distinct parts classified according to levels of services. The distinct part must satisfactorily meet the applicable physical plant standards based on a level of service classification sought for that distinct part. If necessary to protect the health, welfare and safety of residents in a distinct part requiring higher standards, the Department shall require compliance with whatever additional physical plant standards

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are necessary in any distinct part, to achieve this protection as required by the highest level of care being licensed. Administrative, supervisory, and other personnel may be shared by the entire facility, if so doing does not adversely affect meeting the total needs of the residents of the facility.

- d) THE OPERATOR MAY NOT ADMIT RESIDENTS IN EXCESS OF THE LICENSED CAPACITY OF THE FACILITY. (Section 2-209 of the Act) (B)

- e) An intermediate care facility licensed and classified under the Act shall not use in its title or description "Hospital", "Sanitarium", "Sanatorium", "Rehabilitation Center", "Skilled Nursing Facility", or any other word or description in its title or advertisements which indicates that a type of service is provided by the facility which the facility is not licensed to provide or, in fact, does not provide. A skilled nursing facility may use in its title or advertisement the words or description: "Nursing Home", "Intermediate Care", "Skilled Nursing Facility".

- f) Any person constructing or modifying a long-term care facility or portion thereof without obtaining the required permit from the Health Facilities Planning Board shall not be eligible to apply for licensure for that facility or portion thereof (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1163.1).

- g) THE LICENSEE SHALL GIVE 90 DAYS NOTICE PRIOR TO VOLUNTARILY CLOSING A FACILITY OR CLOSING ANY PART OF A FACILITY, OR PRIOR TO CLOSING ANY PART OF A FACILITY IF CLOSING SUCH PART WILL REQUIRE THE TRANSFER OR DISCHARGE OF MORE THAN TEN PERCENT OF THE RESIDENTS. SUCH NOTICE SHALL BE GIVEN TO THE DEPARTMENT, TO ANY RESIDENTS WHO MUST BE TRANSFERRED OR DISCHARGED, TO THE RESIDENT'S REPRESENTATIVE, AND TO A MEMBER OF THE RESIDENT'S FAMILY, WHERE PRACTICABLE. NOTICE SHALL STATE THE PROPOSED DATE OF CLOSING AND THE REASON FOR CLOSING. THE LICENSEE SHALL OFFER TO ASSIST THE RESIDENT IN SECURING AN ALTERNATIVE PLACEMENT AND SHALL ADVISE THE RESIDENT ON AVAILABLE ALTERNATIVES. WHERE THE RESIDENT IS UNABLE TO CHOOSE AN ALTERNATE PLACEMENT AND IS NOT UNDER GUARDIANSHIP, THE DEPARTMENT SHALL BE NOTIFIED OF THE NEED FOR RELOCATION ASSISTANCE. THE FACILITY SHALL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS UNTIL THE DATE OF CLOSING, INCLUDING THOSE RELATED TO TRANSFER OR DISCHARGE OF RESIDENTS. THE DEPARTMENT MAY PLACE A RELOCATION TEAM IN THE FACILITY AS PROVIDED UNDER THE ACT. (Section 3-423 of the Act) (A, B)

- h) Licensure for more than one level of care.

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- 1) A facility may be licensed for more than one level of care. The licensee must designate the level of care that will be provided in each bedroom. Bedrooms of like licensed level of care must be contiguous to each other within each "nursing unit" as defined in Section 300.330. Each nursing unit may have up to two levels of care and must meet the construction standards for the highest licensed level of care in the nursing unit.

- 2) If a licensee wishes to designate a portion of its licensed beds as either Intermediate Care for the Developmentally Disabled or Long-Term Care for Under Age 22, the licensed beds must be located in a distinct part (as defined in Section 300.330) of the facility.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.140 Issuance of an Initial License for a New Facility

- a) UPON RECEIPT AND REVIEW OF AN APPLICATION FOR A LICENSE AND INSPECTION OF THE APPLICANT FACILITY, THE DIRECTOR SHALL ISSUE A PROBATIONARY LICENSE IF HE FINDS:

- 1) THE APPLICANT IS A PERSON RESPONSIBLE AND SUITABLE TO OPERATE OR TO DIRECT OR PARTICIPATE IN THE OPERATION OF A FACILITY BY VIRTUE OF FINANCIAL CAPACITY, APPROPRIATE BUSINESS OR PROFESSIONAL EXPERIENCE, A RECORD OF COMPLIANCE WITH LAWFUL ORDERS OF THE DEPARTMENT AND LACK OF REVOCATION OF A LICENSE DURING THE PREVIOUS FIVE YEARS;

- 2) THE FACILITY IS UNDER THE SUPERVISION OF AN ADMINISTRATOR WHO IS LICENSED UNDER THE NURSING HOME ADMINISTRATORS LICENSING AND DISCIPLINARY ACT (Ill. Rev. Stat. 1989, ch. 111, par. 3651 et seq.); AND

- 3) THE FACILITY IS IN SUBSTANTIAL COMPLIANCE WITH THE ACT AND THIS PART. (Section 3-109 of the Act)

- b) The Department will issue a probationary license for 120 days from the date of issuance. ~~THE DEPARTMENT WILL ISSUE A PROBATIONARY LICENSE FOR 120 DAYS FROM DATE OF ISSUANCE. (Section 3-116 of the Act)~~

- c) WITHIN 30 DAYS PRIOR TO THE TERMINATION OF A PROBATIONARY LICENSE, THE DEPARTMENT SHALL FULLY AND COMPLETELY INSPECT THE FACILITY AND, IF THE FACILITY MEETS THE APPLICABLE

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REQUIREMENTS FOR LICENSURE. SHALL ISSUE A LICENSE UNDER SECTION 3-109 OF THE ACT. If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire. (Section 3-116 of the Act) DURING THE 120-DAY PERIOD OF THE PROBATIONARY LICENSE, THE DEPARTMENT SHALL CONDUCT AN INVESTIGATION OF THE APPLICANT WITHIN 30 DAYS OF THE TERMINATION OF THE PROBATIONARY LICENSE TO DETERMINE WHETHER OR NOT THE APPLICANT THEN COMPLETES, AND IF NOT, WHETHER SATISFACTORY PROGRESS IS BEING MADE TOWARD COMPLIANCE. IF IN COMPLIANCE, THE PROBATIONARY LICENSE WILL BE REPLACED WITH A FULL STATUS LICENSE. IF NOT IN COMPLIANCE AND SATISFACTORY PROGRESS TOWARDS COMPLIANCE IS NOT BEING MADE, THE DEPARTMENT WILL ALLOW THE PROBATIONARY LICENSE TO EXPIRE. (Section 3-116 of the Act)

d) IF THE DEPARTMENT FINDS THAT THE FACILITY DOES NOT MEET THE REQUIREMENTS FOR LICENSURE BUT HAS MADE SUBSTANTIAL PROGRESS TOWARD MEETING THOSE REQUIREMENTS, THE LICENSE MAY BE RENEWED ONCE FOR A PERIOD NOT TO EXCEED 120 DAYS FROM THE EXPIRATION DATE OF THE INITIAL PROBATIONARY LICENSE. Under no condition may more than two successive probationary licenses be issued. (Section 3-116 of the Act) IF THE APPLICANT IS FOUND NOT TO BE IN COMPLIANCE BUT SATISFACTORY PROGRESS IS BEING MADE TOWARD COMPLIANCE, A SECOND PROBATIONARY LICENSE OF UP TO 120 DAYS MAY BE ISSUED. UNDER NO CONDITION MAY MORE THAN TWO SUCCESSIVE PROBATIONARY LICENSES BE ISSUED. (Section 3-116 of the Act)

e) Prior to actual receipt by the operator of the license certificate, the operator may begin operation upon receipt of written approval by the Department.

(Source: Amended at 16 Ill. Reg. _____ effective _____)

Section 300.150 Issuance of an Initial License Due to a Change of Ownership

a) UPON RECEIPT AND REVIEW OF AN APPLICATION FOR A LICENSE THE DIRECTOR SHALL ISSUE A PROBATIONARY LICENSE IF HE FINDS:

- 1) THE APPLICANT IS A PERSON RESPONSIBLE AND SUITABLE TO OPERATE OR TO DIRECT OR TO PARTICIPATE IN THE OPERATION OF A FACILITY BY VIRTUE OF FINANCIAL CAPACITY, APPROPRIATE BUSINESS OR PROFESSIONAL EXPERIENCE, A RECORD OF COMPLIANCE WITH LAWFUL ORDERS OF THE DEPARTMENT AND LACK OF REVOCATION OF A LICENSE DURING

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THE PREVIOUS FIVE YEARS;

- 2) THE FACILITY IS UNDER THE SUPERVISION OF AN ADMINISTRATOR WHO IS LICENSED UNDER THE NURSING HOME ADMINISTRATORS LICENSING AND DISCIPLINARY ACT; AND
 - 3) THE FACILITY IS IN SUBSTANTIAL COMPLIANCE WITH THE ACT AND THIS PART. (Section 3-109 of the Act)
- b) WHENEVER OWNERSHIP OF A FACILITY IS TRANSFERRED FROM THE PERSON NAMED IN A LICENSE TO ANY OTHER PERSON, THE TRANSFEREE MUST OBTAIN A NEW PROBATIONARY LICENSE. THE TRANSFEREE SHALL NOTIFY THE DEPARTMENT OF THE TRANSFER AND APPLY FOR A NEW LICENSE AT LEAST 30 DAYS PRIOR TO FINAL TRANSFER. (Section 3-112 of the Act)

c) THE TRANSFEROR SHALL NOTIFY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO FINAL TRANSFER. THE TRANSFEROR SHALL REMAIN RESPONSIBLE FOR THE OPERATION OF THE FACILITY UNTIL SUCH TIME AS THE LICENSE IS ISSUED TO THE NEW TRANSFEREE. (Section 3-112 of the Act)

d) THE LICENSE GRANTED TO THE TRANSFEREE SHALL BE SUBJECT TO ANY PLAN OF CORRECTION SUBMITTED BY THE PREVIOUS OWNER AND APPROVED BY THE DEPARTMENT AND ANY CONDITIONS CONTAINED IN A CONDITIONAL LICENSE ISSUED TO THE PREVIOUS OWNER. IF THERE ARE OUTSTANDING VIOLATIONS AND NO PLAN OF CORRECTION HAS BEEN SUBMITTED BY THE FACILITY AND APPROVED BY THE DEPARTMENT, THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE AND PLAN OF CORRECTION AS PROVIDED IN SECTIONS 3-311 THROUGH 3-317 OF THE ACT IN PLACE OF A PROBATIONARY LICENSE. (Section 3-113 of the Act)

e) THE TRANSFEROR SHALL REMAIN LIABLE FOR ALL PENALTIES ASSESSED AGAINST THE FACILITY WHICH ARE IMPOSED FOR VIOLATIONS OCCURRING PRIOR TO TRANSFER OF OWNERSHIP. (Section 3-114 of the Act)

f) The Department will issue a probationary license for 120 days from the date of issuance. ~~THE DEPARTMENT WILL ISSUE A PROBATIONARY LICENSE FOR 120 DAYS FROM DATE OF ISSUANCE. (Section 3-116 of the Act)~~

g) WITHIN 30 DAYS PRIOR TO THE TERMINATION OF A PROBATIONARY LICENSE, THE DEPARTMENT SHALL FULLY AND COMPLETELY INSPECT

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THE FACILITY AND, IF THE FACILITY MEETS THE APPLICABLE REQUIREMENTS FOR LICENSURE, SHALL ISSUE A LICENSE UNDER SECTION 3-109 OF THE ACT. If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire. (Section 3-116 of the Act) DURING THE 120 DAYS OF THE PROBATIONARY LICENSE, THE DEPARTMENT SHALL CONDUCT AN INVESTIGATION OF THE APPLICANT WITHIN 30 DAYS OF THE TERMINATION OF THE PROBATIONARY LICENSE TO DETERMINE WHETHER OR NOT THE APPLICANT THEN COMPLIES, AND IF NOT, WHETHER SATISFACTORY PROGRESS IS BEING MADE TOWARD COMPLIANCE. IF IN COMPLIANCE, THE PROBATIONARY LICENSE WILL BE REPLACED WITH A FULL STATUS LICENSE. IF NOT IN COMPLIANCE AND SATISFACTORY PROGRESS TOWARD COMPLIANCE IS NOT BEING MADE, THE DEPARTMENT WILL ALLOW THE PROBATIONARY LICENSE TO EXPIRE. (Section 3-116 of the Act)

- h) IF THE DEPARTMENT FINDS THAT THE FACILITY DOES NOT MEET THE REQUIREMENTS FOR LICENSURE BUT HAS MADE SUBSTANTIAL PROGRESS TOWARD MEETING THOSE REQUIREMENTS, THE LICENSE MAY BE RENEWED ONCE FOR A PERIOD NOT TO EXCEED 120 DAYS FROM THE EXPIRATION DATE OF THE INITIAL PROBATIONARY LICENSE. Under no condition may more than two successive probationary licenses be issued. (Section 3-116 of the Act) IF THE APPLICANT IS FOUND NOT TO BE IN COMPLIANCE BUT SATISFACTORY PROGRESS IS BEING MADE TOWARD COMPLIANCE, A SECOND PROBATIONARY LICENSE OF UP TO 120 DAYS MAY BE ISSUED. UNDER NO CONDITION MAY MORE THAN TWO SUCCESSIVE PROBATIONARY LICENSES BE ISSUED. (Section 3-116 of the Act)

- i) The issuance date of the probationary license to the new owner will be the date the last licensure requirement is met as determined by the Department. Prior to actual receipt by the operator of the license certificate, the operator may begin operation upon receipt of written approval by the Department.

(Source: Amended at 16 Ill. Regg. _____, effective _____)

Section 300.330 Definitions

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

ABUSE - ANY PHYSICAL OR MENTAL INJURY OR SEXUAL ASSAULT INFLECTED ON A RESIDENT OTHER THAN BY ACCIDENTAL MEANS IN A

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FACILITY. (Section 1-103 of the Act)

ACCESS - THE RIGHT TO:

ENTER ANY FACILITY;

COMMUNICATE PRIVATELY AND WITHOUT RESTRICTION WITH ANY RESIDENT WHO CONSENTS TO THE COMMUNICATION;

SEEK CONSENT TO COMMUNICATE PRIVATELY AND WITHOUT RESTRICTION WITH ANY RESIDENT;

INSPECT THE CLINICAL AND OTHER RECORDS OF A RESIDENT WITH THE EXPRESS WRITTEN CONSENT OF THE RESIDENT;

OBSERVE ALL AREAS OF THE FACILITY EXCEPT THE LIVING AREA OF ANY RESIDENT WHO PROTESTS THE OBSERVATION. (Section 1-104 of the Act)

Act - as used in this Part, the Nursing Home Care Act (Ill. Rev. Stat. 1989 and 1990 Supp., ch. 111 1/2, par. 4151-101 et seq.).

Activity Program - a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior - the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Addition - any construction attached to the original building which increases the area or cubic content of the building.

Adequate - enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning - a notice to a facility issued by the Department under Section 300.277 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a type A or type B violation.

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Administrator - the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator)

Advocate - a person who represents the rights and interests of an individual as though they were the person's own, in order to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

AFFILIATE MEANS:

WITH RESPECT TO A PARTNERSHIP, EACH PARTNER THEREOF.

WITH RESPECT TO A CORPORATION, EACH OFFICER, DIRECTOR AND STOCKHOLDER THEREOF.

WITH RESPECT TO A NATURAL PERSON, ANY PERSON RELATED IN THE FIRST DEGREE OF KINSHIP TO THAT PERSON; EACH PARTNERSHIP AND EACH PARTNER THEREOF OF WHICH THAT PERSON OR ANY AFFILIATE OF THAT PERSON IS A PARTNER; AND EACH CORPORATION IN WHICH THAT PERSON OR ANY AFFILIATE OF THAT PERSON IS AN OFFICER, DIRECTOR OR STOCKHOLDER.
(Section 1-106 of the Act)

Aide or Orderly - any person providing direct personal care, training or habilitation services to residents.

Alteration - any construction change or modification of an existing building which does not increase the area or cubic content of the building.

Ambulatory Resident - a person who is physically and mentally capable of walking without assistance, or is physically able with guidance to do so, including the ascent and descent of stairs.

APPLICANT - ANY PERSON MAKING APPLICATION FOR A LICENSE.
(Section 1-107 of the Act)

• **Appropriate** - term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment - the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist - a person who is certified or is eligible for a certificate of clinical

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competence in audiology granted by the American Speech and Hearing Association under its requirements in effect on the publication of this provision or meets the educational requirements for certification, and is in the process of accumulating the supervised experience required for certification.

Autism - A syndrome described as consisting of withdrawal, very inadequate social relationships, exceptional object relationships, language disturbances and monotonously repetitive motor behavior; many children with autism will also be seriously impaired in general intellectual functioning; mental illness observed in young children characterized by severe withdrawal and inappropriate response to external stimulation.

Autoclave - an apparatus for sterilizing by superheated steam under pressure.

Auxiliary Personnel - all nursing personnel in intermediate care facilities and skilled nursing facilities other than licensed personnel.

Basement - when used in this Part, means any story or floor level below the main or street floor. Where due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.

Behavior Modification - treatment to be used to establish or change behavior patterns.

Cerebral Palsy - a disorder dating from birth or early infancy, nonprogressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty and behavior disorders.

Certification for Title XVIII and XIX - the issuance of a document by the Department to the Department of Health and Human Services or the Department of Public Aid verifying compliance with applicable statutory or regulatory requirements for the purposes of participation as a provider of care and service in a specific Federal or State health program.

Charge Nurse - a charge nurse is a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

Community Alternatives - service programs in the community provided as an alternative to institutionalization.

Community Living Facility - see Facility, Community Living.

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Continuing Care Contract - a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract - a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.

Corporal Punishment - painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident - failure to provide a resident with the care and supervision he requires; or, the infliction of mental or physical abuse. Examples of physical abuse are restraining a resident, striking, slapping, hitting, or withholding food as punishment. Examples of mental abuse are swearing, threatening and seclusion.

Dentist - any person licensed by the State of Illinois to practice dentistry, includes persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act (Ill. Rev. Stat. 1989, ch. 111, par. 2301 et seq.).

Department - as used in this Part means the Illinois Department of Public Health.

Developmentally Disabled - those individuals whose disability is attributable to mental retardation, cerebral palsy, epilepsy, autism, or other pathological conditions which generally originate before such individuals attain age 18, and which continue, or can be expected to continue, indefinitely, and which constitute a substantial functioning handicap to such individuals.

Developmental Disability - a severe, chronic disability of a person which:

is attributable to a mental or physical impairment or combination of mental and physical impairment or combination of mental and physical impairments; is manifest before age 22;

is likely to continue indefinitely;

results in substantial functional limitations in three or more of the following areas of major life activities:

self-care;
receptive and expressive language;
learning;

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mobility;

self-direction;

capacity for independent living; and

economic self-sufficiency; and

reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration and individually planned and coordinated.

Dietetic Service Supervisor - a person who:

is a qualified dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or

is a graduate of a Department-approved course that provides 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution, which included consultation from a dietitian; or

has training and experience in food service supervision and management in a military service equivalent in content to the program in paragraph (2) or (3) of this definition.

Dietitian - a person who:

is eligible for registration by the American Dietetic Association; or

has a baccalaureate degree with major studies in food and nutrition, dietetics, and food service management, has one year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

Direct Care Aide - Any person who provides nursing care, personal care or psychosocial support to residents of Specialized living Facilities, regardless of title, and who is not a Qualified Professional, as defined in these rules. Direct Care Aides must function under the supervision of a licensed nurse when performing nursing or personal care duties.

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Direct Supervision - means that work is performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not strictly routine, who regularly reviews the work performed, and who is accountable for the results.

DIRECTOR - THE DIRECTOR OF PUBLIC HEALTH OR HIS DESIGNEE.
(Section 1-110 of the Act)

Director of Nursing Service - the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

DISCHARGE - THE FULL RELEASE OF ANY RESIDENT FROM A FACILITY.
(Section 1-111 of the Act)

Distinct Part - ~~an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided.~~ Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved for the distinct part.

Emergency - a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility.

Epilepsy - a chronic symptom of cerebral dysfunction, characterized by recurrent attacks, involving changes in the state of consciousness, sudden in onset, and of brief duration. Many attacks are accompanied by a seizure in which the person falls involuntarily.

Equivalent of a Graduate Licensed Practical Nurse - a licensed practical nurse, licensed by waiver, who successfully passes the proficiency examination approved by the U.S. Department of Health and Human Services shall be considered the equivalent of a licensed practical nurse who is a graduate of an approved school of practical nursing for the purposes of this Part.

Existing Long-Term Care Facility - any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Facility, Community Living - a place of residence as limited in these standards for

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between five and 80 ambulatory adults who are mildly or moderately mentally retarded with a potential for being absorbed into the mainstream of community life.

Facility, Intermediate Care - a facility which provides basic nursing care and other restorative services under periodic medical direction. Many of these services may require skill in administration. Such facilities are for residents who have long-term illnesses or disabilities which may have reached a relatively stable plateau.

Facility, Intermediate Care for the Developmentally Disabled - when used in this Part, is a facility of three or more persons, or distinct part thereof, serving residents of which more than 50 percent are developmentally disabled. Facilities with any number less than 50 percent of developmentally disabled residents, who are determined by the Department with consultation from the Division of Developmental Disabilities, Illinois Department of Mental Health and Developmental Disabilities to need organized social support and training programs, must comply with the program requirements in this Part.

FACILITY OR LONG-TERM CARE FACILITY - A PRIVATE HOME, INSTITUTION, BUILDING, RESIDENCE, OR ANY OTHER PLACE, WHETHER OPERATED FOR PROFIT OR NOT, OR A COUNTY HOME FOR THE INFIRM AND CHRONICALLY ILL OPERATED PURSUANT TO DIVISION 5-21 OR 5-22 OF THE COUNTIES CODE ~~THE COUNTY HOME ACT~~ (Ill. Rev. Stat. 1989, ch. 34, pars. 5-21001 and 5-22001, 53, par. 61 et seq.) ~~AS NOW OR HEREAFTER AMENDED, OR BY A COUNTY PURSUANT TO "AN ACT IN RELATION TO HOMES FOR THE AGED" (Ill. Rev. Stat. 1989, ch. 34, par. 351 et seq.) AS NOW OR HEREAFTER AMENDED; OR ANY SIMILAR INSTITUTION OPERATED BY A POLITICAL SUBDIVISION OF THE STATE OF ILLINOIS, WHICH PROVIDES, THROUGH ITS OWNERSHIP OR MANAGEMENT, PERSONAL CARE, SHELTERED CARE OR NURSING FOR THREE OR MORE PERSONS, NOT RELATED TO THE APPLICANT OR OWNER BY BLOOD OR MARRIAGE. IT INCLUDES SKILLED NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES AS THOSE TERMS ARE DEFINED IN TITLE XVIII AND TITLE XIX OF THE FEDERAL SOCIAL SECURITY ACT (42 U.S.C.A. 1395 et seq. and 1936 et seq.). A "facility" may consist of more than one building as long as the buildings are on the same tract, or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "FACILITY" DOES NOT INCLUDE~~ THE FOLLOWING:

A HOME, INSTITUTION, OR OTHER PLACE OPERATED BY THE FEDERAL GOVERNMENT OR AGENCY THEREOF, OR BY THE STATE OF ILLINOIS;

A HOSPITAL, SANITARIUM, OR OTHER INSTITUTION WHOSE

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PRINCIPAL ACTIVITY OR BUSINESS IS THE DIAGNOSIS, CARE, AND TREATMENT OF HUMAN ILLNESS THROUGH THE MAINTENANCE AND OPERATION AS ORGANIZED FACILITIES THEREFOR, WHICH IS REQUIRED TO BE LICENSED UNDER THE HOSPITAL LICENSING ACT (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 142 et seq.) AS NOW OR HEREFTER AMENDED;

ANY "FACILITY FOR CHILD CARE" AS DEFINED IN THE CHILD CARE ACT OF 1969 (Ill. Rev. Stat. 1989, ch. 23, par. 2211 et seq.) AS NOW OR HEREFTER AMENDED; OR

ANY "COMMUNITY LIVING FACILITY" AS DEFINED IN THE COMMUNITY LIVING FACILITIES LICENSING ACT (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 4181 et seq.);

ANY "COMMUNITY RESIDENTIAL ALTERNATIVE" AS DEFINED IN THE COMMUNITY RESIDENTIAL ALTERNATIVES LICENSING ACT (Ill. Rev. Stat. 1989, ch. 91 1/2, par. 621 et seq.);

ANY NURSING HOME OR SANATORIUM OPERATED SOLELY BY AND FOR PERSONS WHO RELY EXCLUSIVELY UPON TREATMENT BY SPIRITUAL MEANS THROUGH PRAYER, IN ACCORDANCE WITH THE CREED OR TENETS OF ANY WELL-RECOGNIZED CHURCH OR RELIGIOUS DENOMINATION. HOWEVER, SUCH NURSING HOME OR SANATORIUM SHALL COMPLY WITH ALL LOCAL LAWS AND RULES RELATING TO SANITATION AND SAFETY; OR (Section 1-113 of the Act)

ANY FACILITY LICENSED BY THE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES AS A COMMUNITY-INTEGRATED LIVING ARRANGEMENT AS DEFINED IN THE COMMUNITY-INTEGRATED LIVING ARRANGEMENTS LICENSURE AND CERTIFICATION ACT (Ill. Rev. Stat. 1989, ch. 91 1/2, par. 1701 et seq.). (Section 1-113 of the Act)

• Facility, Skilled Nursing - when used in this Part is synonymous with a skilled nursing facility. A skilled nursing facility provides skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. Such facilities are provided for patients who need the type of care and treatment required during the post acute phase of illness or during recurrences of symptoms in long-term illness.

Financial Responsibility - sufficient assets to provide adequate services such as: staff,

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heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

Full-time - means on duty a minimum of 36 hours, four days per week.

Goal - an expected result or condition that involves a relatively long period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific, short-term objectives directed toward its attainment.

Governing Body - the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

GUARDIAN - A PERSON APPOINTED AS A GUARDIAN OF THE PERSON OR GUARDIAN OF THE ESTATE, OR BOTH, OF A RESIDENT UNDER THE PROBATE ACT OF 1975 (Ill. Rev. Stat. 1989, ch. 110 1/2, par. 1-1 et seq.) AS NOW OR HEREFTER AMENDED. (Section 1-114 of the Act)

Habilitation - an effort directed toward the alleviation of a disability or toward increasing a person's level of physical, mental, social or economic functioning.

Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services.

Health Services Supervisor - (Director of Nursing Service) the full-time Registered Nurse, or Licensed Practical Nurse, who is directly responsible for the immediate supervision of the health services in an Intermediate Care Facility.

Home for the Aged - any facility which is operated: by a not-for-profit corporation incorporated under, or qualified as a foreign corporation under, the General Not For Profit Corporation Act of 1986, as heretofore or hereafter amended (Ill. Rev. Stat. 1989, ch. 32, par. 101.01 et seq.); or, by a county pursuant to Division 5-22 of the Counties Code "AN ACT in relation to homes for the aged", as heretofore or hereafter amended (Ill. Rev. Stat. 1989, ch. 34, par. 5-22001.3561 et seq.); or, pursuant to a trust or endowment established for nonprofit, charitable purposes, and which provides maintenance, personal care, nursing or sheltered care to three or more residents, 90 percent of whom are 60 or more years of age.

Hospitalization - the care and treatment of a person in a hospital as an in-patient.

House Manager - a qualified person on duty 40 hours a week managing the Community Living Facility and responsible for its operation and its inhabitants.

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Individual Educational Program (IEP) - a written statement for each resident that provides for specific education and related services. The Individual Education Program may be incorporated into the Individual Habilitation Plan (IHP).

Individual Habilitation Plan (IHP) - a total plan of care that is developed by the interdisciplinary team for each resident, and that is developed on the basis of all assessment results.

Institutional Occupancy - when used in this Part means Health Care Facilities, Group (a), as defined in Chapter 10, paragraph 10-0001 of the Life Safety Code, National Fire Protection Association (1985 Edition).

Interdisciplinary Team - a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. In Intermediate Care Facilities for the Developmentally Disabled (ICF-DD-s) at least one member of the team shall be a Qualified Mental Retardation Professional.

Licensed Nursing Home Administrator - a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act (Ill. Rev. Stat. 1989, ch. 111, par. 3651 et seq.), as now or hereafter amended.

Licensed Practical Nurse - a person with a valid Illinois license to practice as a practical nurse.

LICENSEE - THE PERSON OR ENTITY LICENSED TO OPERATE THE FACILITY AS PROVIDED UNDER THE ACT. (Section 1-115 of the Act)

Life Care Contract - a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

MAINTENANCE - FOOD, SHELTER, AND LAUNDRY SERVICES. (Section 1-116 of the Act)

• Maladaptive Behavior - impairment in adaptive behavior as determined by a clinical psychologist or by a physician. Impaired adaptive behavior may be reflected in delayed maturation, reduced learning ability or inadequate social adjustment.

Medical Record Practitioner - a person who: is eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART), by the American Medical Record Association under its requirements; or is a graduate of a school of

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medical record science that is accredited jointly by the American Medical Association and the American Medical Record Association.

Mentally Retarded and Mental Retardation - subaverage general intellectual functioning originating during the developmental period and associated with maladaptive behavior.

Misappropriation of Property - using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Mobile Nonambulatory - unable to walk independently or without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, or wheeled platforms.

Mobile Resident - any resident who is able to move about either independently or with the aid of assistive devices such as walkers, crutches, wheelchairs, or wheeled platforms.

Monitor - a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.

NEGLECT - A FAILURE IN A FACILITY TO PROVIDE ADEQUATE MEDICAL OR PERSONAL CARE OR MAINTENANCE, WHICH FAILURE RESULTS IN PHYSICAL OR MENTAL INJURY TO A RESIDENT OR IN THE DETERIORATION OF A RESIDENT'S PHYSICAL OR MENTAL CONDITION. (Section 1-117 of the Act)

New Long-Term Care Facility - any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

• Normalization - the principle of helping individuals to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

NURSE - A REGISTERED NURSE OR A LICENSED PRACTICAL NURSE AS DEFINED IN THE ILLINOIS NURSING ACT OF 1987 (Ill. Rev. Stat. 1989, ch. 111,

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par. 3501 et seq.) AS NOW OR HEREAFTER AMENDED. (Section 1-118 of the Act)

Nursing Assistant - Any person who provides nursing care or personal care to residents of licensed long-term care facilities, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Professional Regulation to render medical care. Other titles often used to refer to nursing assistants include, but are not limited to, nurse's aide, orderly and nurse technician. Nursing assistants must function under the supervision of a licensed nurse.

Nursing Care - a complex of activities which carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

Nursing Unit - a physically identifiable designated area ~~distinct part~~ of a facility consisting of all the beds within the designated area ~~distinct part~~, but having no more than 75 beds, none of which are more than 120 feet from the nurse's station.

Objective - an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

Occupational Therapist, Registered (OTR) - a person who is registered with the Department of Professional Regulation as an occupational therapist under the Illinois Occupational Therapy Practice Act (Ill. Rev. Stat. 1989, ch. 111, par. 3701 et seq.).

Occupational Therapy Assistant - a person who is registered with the Department of Professional Regulation as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator - the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Oversight - general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed physician, are in need of residential care.

OWNER - THE INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION OR OTHER PERSON WHO OWNS A FACILITY. IN THE EVENT A FACILITY

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IS OPERATED BY A PERSON WHO LEASES THE PHYSICAL PLANT, WHICH IS OWNED BY ANOTHER PERSON, "OWNER" MEANS THE PERSON WHO OPERATES THE FACILITY, EXCEPT THAT IF THE PERSON WHO OWNS THE PHYSICAL PLANT IS AN AFFILIATE OF THE PERSON WHO OPERATES THE FACILITY AND HAS SIGNIFICANT CONTROL OVER THE DAY-TO-DAY OPERATIONS OF THE FACILITY, THE PERSON WHO OWNS THE PHYSICAL PLANT SHALL INCUR JOINTLY AND SEVERALLY WITH THE OWNER ALL LIABILITIES IMPOSED ON AN OWNER UNDER THE ACT. (Section 1-119 of the Act)

Person - any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

PERSONAL CARE - ASSISTANCE WITH MEALS, DRESSING, MOVEMENT, BATHING, OR OTHER PERSONAL NEEDS, OR GENERAL SUPERVISION AND OVERSIGHT OF THE PHYSICAL AND MENTAL WELL-BEING OF AN INDIVIDUAL, EXCLUSIVE OF NURSING, WHO BECAUSE OF AGE, PHYSICAL OR MENTAL DISABILITY, EMOTIONAL OR BEHAVIOR DISORDER, OR MENTAL RETARDATION IS INCAPABLE OF MAINTAINING A PRIVATE, INDEPENDENT RESIDENCE, OR WHO IS INCAPABLE OF MANAGING HIS PERSON WHETHER OR NOT A GUARDIAN HAS BEEN APPOINTED. (Section 1-120 of the Act)

Pharmacist, Registered - a person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 (Ill. Rev. Stat. 1989, ch. 111, par. 4121 et seq.).

Physical Therapy Assistant - a person who has graduated from a two year college level program approved by the American Physical Therapy Association.

Physical Therapist - a person who is registered with the Department of Professional Regulation as a physical therapist under the Illinois Physical Therapy Act (Ill. Rev. Stat. 1989, ch. 111 par. 4251 et seq.).

Physician - any person licensed by the State of Illinois to practice medicine in all its branches as provided in the Medical Practice Act of 1987 (Ill. Rev. Stat. 1989, ch. 111, par. 4400-1 et seq.).

Probationary License - an initial license issued for a period of 120 days during which time the Department will determine the qualifications of the applicant.

Program Coordinator - a qualified person directly responsible for the overall program, operation and management of a Community Living Facility.

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Program Unit - a resident care unit in Specialized Living Facilities equivalent to a nursing unit in Skilled Nursing facilities as defined in this Part.

Psychiatrist - a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

Psychologist - a person who is licensed by the Illinois Department of Professional Regulation to practice clinical psychology under the Clinical Psychologist Licensing Act (Ill. Rev. Stat. 1989, ch. 111, par. 5351 et seq.).

Qualified Mental Retardation Professional - a person who has at least one year of experience working directly with individuals with developmental disabilities and meets at least one of the following additional qualifications:

Be a physician as defined in this Section.

Be a registered nurse as defined in this Section.

Hold at least a bachelor's degree in one of the following fields: occupational therapy, physical therapy, psychology, social work, speech or language pathology, recreation (or a recreational specialty area such as art, dance, music, or physical education), dietary services or dietetics, or a human services field (such as sociology, special education, or rehabilitation counseling).

Qualified Professional - a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the State of Illinois, if required.

REASONABLE VISITING HOURS - ANY TIME BETWEEN THE HOURS OF 10 A.M. AND 8 P.M. DAILY. (Section 1-121 of the Act)

Registered Nurse - a person with a valid Illinois license from the Illinois Department of Professional Regulation to practice as a registered professional nurse under the Illinois Nursing Act of 1987.

REPEAT VIOLATION - FOR PURPOSES OF ASSESSING FINES UNDER SECTION 3-305 OF THE ACT, A VIOLATION THAT HAS BEEN CITED DURING ONE INSPECTION OF THE FACILITY FOR WHICH A SUBSEQUENT INSPECTION INDICATES THAT AN ACCEPTED PLAN OF CORRECTION WAS NOT COMPLIED WITH, within a period of not more than twelve months from the issuance of the initial violation. A REPEAT VIOLATION SHALL NOT BE A CITATION OF THE SAME

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RULE, UNLESS THE LICENSEE IS NOT SUBSTANTIALLY ADDRESSING THE ISSUE ROUTINELY THROUGHOUT THE FACILITY. (Section 3-305(7) of the Act)

Reputable Moral Character - having no history of a conviction of the applicant, or if the applicant is a firm, partnership, or association, of any of its members, or of a corporation, of any of its officers, or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the facility is not reputable.

RESIDENT - PERSON RESIDING IN AND RECEIVING PERSONAL CARE FROM A FACILITY. (Section 1-122 of the Act)

Resident Services Director - the full-time administrator, or an individual on the professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

RESIDENT'S REPRESENTATIVE - A PERSON OTHER THAN THE OWNER, OR AN AGENT OR EMPLOYEE OF A FACILITY NOT RELATED TO THE RESIDENT, DESIGNATED IN WRITING BY A RESIDENT TO BE HIS REPRESENTATIVE, OR THE RESIDENT'S GUARDIAN, OR THE PARENT OF A MINOR RESIDENT, FOR WHOM NO GUARDIAN HAS BEEN APPOINTED. (Section 1-123 of the Act)

Restorative Care - a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Restraint of a Resident - the application of a device to limit movements.

Room - a part of the inside of a facility that is partitioned continuously from floor to ceiling with openings closed with glass or hinged doors.

* Safety Device - any equipment or protective device used on a bed, chair, or resident which prevents him from falling or otherwise injuring himself. Examples are: bedside rails, geriatric or adaptive chairs; a wide band, vest or sheet applied to prevent falling out of a bed or chair; and hand socks applied to prevent injuring one's self.

Sanitization - the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

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Satisfactory - same as adequate.

Seclusion - the retention of a resident in a room which the resident cannot open.

Self Preservation - the ability to follow directions or recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

SHELTERED CARE - MAINTENANCE AND PERSONAL CARE. (Section 1-124 of the Act)

Social Worker, Qualified - a person who:

is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act (Ill. Rev. Stat. 1989, ch. 111, par. 6351 et seq.); and

is a graduate of a school of social work which has been approved by the Council on Social Work Education (some schools are approved for Bachelor's Degree programs and others for Master's Degree programs); and
has one year of social work experience in a health care setting.

State Fire Marshal - the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

Sterilization - the act or process of destroying completely all forms of microbial life, including viruses.

STOCKHOLDER OF A CORPORATION - ANY PERSON WHO, DIRECTLY OR INDIRECTLY, BENEFICIALLY OWNS, HOLDS OR HAS THE POWER TO VOTE, AT LEAST FIVE PERCENT OF ANY CLASS OF SECURITIES ISSUED BY THE CORPORATION. (Section 1-125 of the Act)

Story - when used in this Part means that portion of a building between the upper surface of any floor and the upper surface of the floor above except that the topmost story shall be the portion of a building between the upper surface of the topmost floor and the upper surface of the roof above.

* STUDENT INTERN - MEANS ANY PERSON WHOSE TOTAL TERM OF EMPLOYMENT IN ANY FACILITY DURING ANY 12-MONTH PERIOD IS EQUAL TO OR LESS THAN 90 CONTINUOUS DAYS, AND WHOSE TERM OF EMPLOYMENT IS EITHER:

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AN ACADEMIC CREDIT REQUIREMENT IN A HIGH SCHOOL OR UNDERGRADUATE INSTITUTION, OR

IMMEDIATELY SUCCEEDS A FULL QUARTER, SEMESTER OR TRIMESTER OF ACADEMIC ENROLLMENT IN EITHER A HIGH SCHOOL OR UNDERGRADUATE INSTITUTION, PROVIDED THAT SUCH PERSON IS REGISTERED FOR ANOTHER FULL QUARTER, SEMESTER OR TRIMESTER OF ACADEMIC ENROLLMENT IN EITHER A HIGH SCHOOL OR UNDERGRADUATE INSTITUTION WHICH QUARTER, SEMESTER OR TRIMESTER WILL COMMENCE IMMEDIATELY FOLLOWING THE TERM OF EMPLOYMENT. (Section 1-125.1 of the Act)

Substantial - meeting requirements except for variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Sections 300.280(q)(8), 300.280(k)(2) and 300.280(k)(4).

Substantial failure - the failure to meet requirements other than a variance from the strict and literal performance, which results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Sections 300.180(b)(1) and 300.260(f).

Sufficient - Same as adequate.

Supervision - authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Unless otherwise stated in this Part, the supervisor must be on the premises if the person does not meet assistant level (two-year training program) qualifications specified in these definitions.

Therapeutic Recreation Specialist - a person who is certified by the National Council for Therapeutic Recreation Certification and who meets the minimum standards it has established for classification as a Therapeutic Recreation Specialist.

* Time Out - removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

TITLE XVIII - TITLE XVIII OF THE FEDERAL SOCIAL SECURITY ACT AS NOW OR HEREAFTER AMENDED. (Section 1-126 of the Act)

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TITLE XIX - TITLE XIX OF THE FEDERAL SOCIAL SECURITY ACT AS NOW OR HEREFTER AMENDED. (Section 1-127 of the Act)

TRANSFER - A CHANGE IN STATUS OF A RESIDENT'S LIVING ARRANGEMENTS FROM ONE FACILITY TO ANOTHER FACILITY. (Section 1-128 of the Act)

TYPE A VIOLATION - A VIOLATION OF THE ACT OR OF THE RULES PROMULGATED THEREUNDER WHICH CREATES A CONDITION OR OCCURRENCE RELATING TO THE OPERATION AND MAINTENANCE OF A FACILITY PRESENTING A SUBSTANTIAL PROBABILITY THAT DEATH OR SERIOUS MENTAL OR PHYSICAL HARM TO A RESIDENT WILL RESULT THEREFROM. (Section 1-129 of the Act)

TYPE B VIOLATION - A VIOLATION OF THE ACT OR OF THE RULES PROMULGATED THEREUNDER WHICH CREATES A CONDITION OR OCCURRENCE RELATING TO THE OPERATION AND MAINTENANCE OF A FACILITY DIRECTLY THREATENING TO THE HEALTH, SAFETY OR WELFARE OF A RESIDENT. (Section 1-130 of the Act)

Unit - an entire physically identifiable residence area, in Community Living Facilities consisting of not less than five nor more than 20 beds, and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for each distinct resident area are established as set forth in the respective regulations governing the approved levels of service.

Universal Progress Notes - a common record with periodic narrative documentation by all persons involved in resident care.

Valid License - a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 16 Ill. Reg. _____ effective _____)

Section 300.630

Contract Between Resident and Facility

a) Contract Execution

- 1) BEFORE A PERSON IS ADMITTED TO A FACILITY, OR AT THE EXPIRATION OF THE PERIOD OF PREVIOUS CONTRACT, OR WHEN THE SOURCE OF PAYMENT FOR THE RESIDENT'S CARE CHANGES FROM PRIVATE TO PUBLIC FUNDS OR FROM PUBLIC TO PRIVATE FUNDS, A WRITTEN CONTRACT SHALL BE EXECUTED BETWEEN A LICENSEE AND THE FOLLOWING IN ORDER OF PRIORITY:

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- A) THE PERSON, OR IF THE PERSON IS A MINOR, HIS PARENT OR GUARDIAN; OR

- B) THE PERSON'S GUARDIAN, IF ANY, OR AGENT, IF ANY, AS DEFINED IN SECTION 11a-23 OF THE PROBATE ACT OF 1975, AS NOW OR HEREFTER AMENDED; OR

- C) A MEMBER OF THE PERSON'S IMMEDIATE FAMILY. (Section 2-202(a) of the Act)

- 2) AN ADULT PERSON SHALL BE PRESUMED TO HAVE THE CAPACITY TO CONTRACT FOR ADMISSION TO A LONG-TERM CARE FACILITY UNLESS HE HAS BEEN ADJUDICATED A "DISABLED PERSON" WITHIN THE MEANING OF SECTION 11a-2 OF THE PROBATE ACT OF 1975, AS NOW OR HEREFTER AMENDED, OR UNLESS A PETITION FOR SUCH AN ADJUDICATION IS PENDING IN A CIRCUIT COURT OF ILLINOIS. (Section 2-202(a) of the Act)

- 3) IF THERE IS NO GUARDIAN, AGENT OR MEMBER OF THE PERSON'S IMMEDIATE FAMILY AVAILABLE, ABLE OR WILLING TO EXECUTE THE CONTRACT REQUIRED BY SECTION 2-202 OF THE ACT AND A PHYSICIAN DETERMINES THAT A PERSON IS SO DISABLED AS TO BE UNABLE TO CONSENT TO PLACEMENT IN A FACILITY, OR IF A PERSON HAS ALREADY BEEN FOUND TO BE A "DISABLED PERSON", BUT NO ORDER HAS BEEN ENTERED ALLOWING RESIDENTIAL PLACEMENT OF THE PERSON, THAT PERSON MAY BE ADMITTED TO A FACILITY BEFORE THE EXECUTION OF A CONTRACT REQUIRED BY THAT SECTION; PROVIDED THAT A PETITION FOR GUARDIANSHIP OR FOR MODIFICATION OF GUARDIANSHIP IS FILED WITHIN 15 DAYS OF THE PERSON'S ADMISSION TO A FACILITY, AND PROVIDED FURTHER THAT SUCH A CONTRACT IS EXECUTED WITHIN TEN DAYS OF THE DISPOSITION OF THE PETITION. (Section 2-202(a) of the Act)

- 4) NO ADULT SHALL BE ADMITTED TO A FACILITY IF HE OBJECTS, ORALLY OR IN WRITING, TO SUCH ADMISSION, EXCEPT AS OTHERWISE PROVIDED IN CHAPTERS III AND IV OF THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE, AS AMENDED, OR SECTION 11a-14.1 OF THE PROBATE ACT OF 1975, AS AMENDED. (Section 2-202(a) of the Act)

- 5) If on the effective date of this Part, a person has not executed a contract as required by Section 2-202 of the Act, then such a contract shall be executed

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by, or on behalf of the person, within ten days of the effective date of this Part ~~these rules~~, unless a petition has been filed for guardianship or modification of guardianship. If a petition for guardianship or modification of guardianship has been filed, and there is no guardian, agent or a member of the person's immediate family available, able, or willing to execute the contract at that time, then a contract shall be executed within ten days of the disposition of such petition.

b) The contract shall be clearly and unambiguously entitled, "Contract Between Resident and (name of facility)."

c) A RESIDENT SHALL NOT BE DISCHARGED OR TRANSFERRED AT THE EXPIRATION OF THE TERM OF A CONTRACT, EXCEPT AS PROVIDED IN SECTIONS 3-401 THROUGH 3-423 OF THE ACT. (Section 2-202(b) of the Act)

d) AT THE TIME OF THE RESIDENT'S ADMISSION TO THE FACILITY, A COPY OF THE CONTRACT SHALL BE GIVEN TO THE RESIDENT, HIS GUARDIAN, IF ANY, AND ANY OTHER PERSON WHO EXECUTED THE CONTRACT. (Section 2-202(c) of the Act)

e) The contract shall be signed by the licensee or his agent. The title of each person signing the contract for the facility shall be clearly indicated next to each such signature. The nursing home administrator may sign as the agent of the licensee.

f) The contract shall be signed by, or for, the resident, as described in subsection (a) of this Section. If any person other than the principal signatory is to be held individually responsible for payments due under the contract, that person shall also sign the contract on a separate signature line labelled "signature of responsible party" or "signature of guarantor."

g) The contract shall include a definition of "responsible party" or "guarantor" which describes in full the liability incurred by any such person.

h) A COPY OF THE CONTRACT FOR A RESIDENT WHO IS SUPPORTED BY NONPUBLIC FUNDS OTHER THAN THE RESIDENT'S OWN FUNDS SHALL BE MADE AVAILABLE TO THE PERSON PROVIDING THE FUNDS FOR THE RESIDENT'S SUPPORT. (Section 2-202(d) of the Act)

i) THE ORIGINAL OR A COPY OF THE CONTRACT SHALL BE MAINTAINED IN THE FACILITY AND BE MADE AVAILABLE UPON REQUEST TO REPRESENTATIVES OF THE DEPARTMENT AND THE DEPARTMENT OF PUBLIC AID. (Section 2-202(e) of the Act)

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j) THE CONTRACT SHALL BE WRITTEN IN CLEAR AND UNAMBIGUOUS LANGUAGE AND SHALL BE PRINTED IN NOT LESS THAN 12 POINT TYPE. (Section 2-202(f) of the Act)

k) THE CONTRACT SHALL SPECIFY THE TERM OF THE CONTRACT. (Section 2-202(g)(1) of the Act)

l) THE CONTRACT SHALL SPECIFY THE SERVICES TO BE PROVIDED UNDER THE CONTRACT AND THE CHARGES FOR THE SERVICES. A paragraph shall itemize the services and products to be provided by the facility and express the cost of the itemized services and products to be provided either in terms of a daily, weekly, monthly or yearly rate, or in terms of a single fee. (Section 2-202(g)(2) of the Act)

m) THE CONTRACT SHALL SPECIFY THE SERVICES THAT MAY BE PROVIDED TO SUPPLEMENT THE CONTRACT AND THE CHARGES FOR THE SERVICES. (Section 2-202(g)(3) of the Act)

1) A paragraph shall itemize all services and products offered by the facility or related institutions which are not covered by the rate or fee established in subsection (l) of this Section. If a separate rate or fee for any such supplemental service or product can be calculated with definiteness at the time the contract is executed then such additional cost shall be specified in the contract.

2) If the cost of any itemized service or product to be provided by the facility or related institutions to the resident cannot be established or predicted with definiteness at the time of the resident's admission to the facility or at the time of the execution of the contract, then no cost for that service or product need be stated in the contract. But the contract shall include a statement explaining the resident's liability for such itemized service or product and explaining that the resident will be receiving a bill for such itemized service or product beyond and in addition to any rate or fee set forth in the contract.

n) THE CONTRACT SHALL SPECIFY THE SOURCES LIABLE FOR PAYMENT DUE UNDER THE CONTRACT. (Section 2-202(g)(4) of the Act)

o) THE CONTRACT SHALL SPECIFY THE AMOUNT OF DEPOSIT PAID. Such amount shall be expressed in terms of a precise number of dollars and be clearly designated as a deposit. The contract shall specify when such deposit shall be paid by the resident, and the contract shall specify when such deposit shall be returned by the facility. The contract shall specify the conditions (if any) which must be satisfied by the resident before the facility shall return the deposit. Upon the satisfaction of all such conditions, the deposit shall be returned to the resident. If the deposit is

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nonrefundable, the contract shall provide express notice of such nonrefundability. (Section 2-202(g)(5) of the Act)

- p) THE CONTRACT SHALL SPECIFY THE RIGHTS, DUTIES AND OBLIGATIONS OF THE RESIDENT, EXCEPT THAT THE SPECIFICATION OF A RESIDENT'S RIGHTS MAY BE FURNISHED ON A SEPARATE DOCUMENT WHICH COMPLIES WITH THE REQUIREMENTS OF SECTION 2-211 OF THE ACT. (Section 2-202(g)(6) of the Act)

- q) THE CONTRACT SHALL DESIGNATE THE NAME OF THE RESIDENT'S REPRESENTATIVE, IF ANY. THE RESIDENT SHALL PROVIDE THE FACILITY WITH A COPY OF THE WRITTEN AGREEMENT BETWEEN THE RESIDENT AND THE RESIDENT'S REPRESENTATIVE WHICH AUTHORIZES THE RESIDENT'S REPRESENTATIVE TO INSPECT AND COPY THE RESIDENT'S RECORDS AND AUTHORIZES THE RESIDENT'S REPRESENTATIVE TO EXECUTE THE CONTRACT ON BEHALF OF THE RESIDENT REQUIRED BY SECTION 2-202 OF THE ACT. (Section 2-202(h) of the Act)

- r) THE CONTRACT SHALL PROVIDE THAT IF THE RESIDENT IS COMPELLED BY A CHANGE IN PHYSICAL OR MENTAL HEALTH TO LEAVE THE FACILITY, THE CONTRACT AND ALL OBLIGATIONS UNDER IT SHALL TERMINATE ON SEVEN DAYS NOTICE. IT SHALL ALSO PROVIDE THAT IN ALL OTHER SITUATIONS, A RESIDENT MAY TERMINATE THE CONTRACT AND ALL OBLIGATIONS UNDER IT WITH 30 DAYS NOTICE. ALL CHARGES SHALL BE PRORATED AS OF THE DATE ON WHICH THE CONTRACT TERMINATES, AND, IF ANY PAYMENTS HAVE BEEN MADE IN ADVANCE, THE EXCESS SHALL BE REFUNDED TO THE RESIDENT. THIS PROVISION SHALL NOT APPLY TO LIFE CARE CONTRACTS THROUGH WHICH A FACILITY AGREES TO PROVIDE MAINTENANCE AND CARE FOR A RESIDENT THROUGHOUT THE REMAINDER OF THE RESIDENT'S LIFE NOR TO CONTINUING-CARE CONTRACTS THROUGH WHICH A FACILITY AGREES TO SUPPLEMENT ALL AVAILABLE FORMS OF FINANCIAL SUPPORT IN PROVIDING MAINTENANCE AND CARE FOR A RESIDENT THROUGHOUT THE REMAINDER OF THE RESIDENT'S LIFE. (Section 2-202(i) of the Act)

- s) * After July 1, 1982, all facilities which offer to provide a resident with NURSING SERVICES, MEDICAL SERVICES OR PERSONAL CARE SERVICES, IN ADDITION TO MAINTENANCE SERVICES, CONDITIONED UPON THE TRANSFER OF AN ENTRANCE FEE TO THE PROVIDER OF SUCH SERVICES IN ADDITION TO OR IN LIEU OF THE PAYMENT OF REGULAR PERIODIC CHARGES FOR THE CARE AND SERVICES INVOLVED, nursing services, medical services or personal care services, in addition to maintenance services, for a

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term in excess of one year or for life pursuant to a life care contract, shall meet all of the provisions of the Life Care Facilities Act (Ill. Rev. Stat. 1989⁷, ch. 111 1/2, par. 4160-1 et seq.) as now or hereafter amended, including the obtaining of a permit from the Department, before they may enter into such contracts. (Section 2(c) of the Life Care Facilities Act)

- t) IN ADDITION TO ALL OTHER CONTRACT SPECIFICATIONS CONTAINED IN THIS SECTION, ADMISSION CONTRACTS SIGNED OR RENEWED AFTER JULY 1, 1985, SHALL ALSO SPECIFY:

- 1) WHETHER THE FACILITY ACCEPTS MEDICAID CLIENTS;
- 2) WHETHER THE FACILITY REQUIRES A DEPOSIT OF THE RESIDENT OR HIS FAMILY PRIOR TO THE ESTABLISHMENT OF MEDICAID ELIGIBILITY;
- 3) IN THE EVENT THAT A DEPOSIT IS REQUIRED, A CLEAR AND CONCISE STATEMENT OF THE PROCEDURE TO BE FOLLOWED FOR THE RETURN OF SUCH DEPOSIT TO THE RESIDENT OR THE APPROPRIATE FAMILY MEMBER OR GUARDIAN OF THE PERSON;
- 4) THAT ALL DEPOSITS MADE TO A FACILITY BY A RESIDENT, OR ON BEHALF OF A RESIDENT, SHALL BE RETURNED BY THE FACILITY WITHIN 30 DAYS OF THE ESTABLISHMENT OF MEDICAID ELIGIBILITY, UNLESS SUCH DEPOSITS MUST BE DRAWN UPON OR ENCUMBERED IN ACCORDANCE WITH MEDICAID ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE ILLINOIS DEPARTMENT OF PUBLIC AID. (Section 2-202(j) of the Act)

- u) IT SHALL BE A BUSINESS OFFENSE FOR A FACILITY TO KNOWINGLY AND INTENTIONALLY BOTH RETAIN A RESIDENT'S DEPOSIT AND ACCEPT MEDICAID PAYMENTS ON BEHALF OF THE RESIDENT. (Section 2-202(k) of the Act)

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.1010 Medical Care Policies

- a) Advisory Physician or Medical Advisory Committee

- 1) There shall be an advisory physician, or a medical advisory committee composed of physicians, who shall be responsible for advising the

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administrator on the overall medical management of the residents and the staff of the facility. If the facility employs a house physician, he may be the advisory physician. (B)

- 2) Additional for Skilled Nursing Facilities. There shall be a medical advisory committee composed of two or more physicians who shall be responsible for advising the administrator on the overall medical management of the residents and the staff in the facility. If the facility employs a house physician, the house physician may be one member of this committee.
- b) The facility shall have and follow a written program of medical services which sets forth the following: the philosophy of care and policies and procedures to implement it; the structure and function of the medical advisory committee, if the facility has one; the health services provided; arrangements for transfer when medically indicated; and procedures for securing the cooperation of residents' personal physicians. The medical program shall be approved in writing by the advisory physician or the medical advisory committee. (B)
- c) Every resident shall be under the care of a physician.
- d) All residents, or their guardians, shall be permitted their choice of a physician.
- e) All residents shall be seen by their physician as often as necessary to assure adequate health care. (Medicare/Medicaid requires certification visits.)
- f) Physician treatment plans, orders and similar documentation shall have an original written signature of the physician. A stamp signature, with or without initials, is not sufficient.
- g) Each resident admitted shall have a physical examination, within five days prior to admission or within 72 hours after admission. The examination report shall include at a minimum each of the following:
 - 1) An evaluation of the resident's condition, including height and weight, diagnoses, plan of treatment, recommendations, treatment orders, personal care needs, and permission for participation in activity programs as appropriate.
 - 2) Documentation of the presence or absence of tuberculosis infection by tuberculin skin test in accordance with Section 300.1025.
 - 3) Documentation of the presence or absence of incipient or manifest decubitus ulcers (commonly known as bed sores), with grade, size and location specified, and orders for treatment, if present. (A photograph of incipient or manifest

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decubitus ulcers is recommended on admission.)

- 43) Orders from the physician regarding weighing of the resident, and the frequency of such weighing, if ordered.
- h) The facility shall notify the resident's physician of any accident, injury, or significant change in a resident's condition that threatens the health, safety or welfare of a resident, including, but not limited to, the presence of incipient or manifest decubitus ulcers or a weight loss or gain of five percent or more within a period of 30 days. The facility shall obtain and record the physician's plan of care for the care or treatment of such accident, injury or change in condition at the time of notification. (B)
- i) At the time of an accident or injury, immediate treatment shall be provided by personnel trained in first aid procedures. (B)

(Source: Amended at 16 Ill. Reg. _____ effective _____)

Section 300.1220 Supervision of Nursing Services

- a) Each skilled nursing facility shall have a director of nursing service or health services supervisor who shall be a registered nurse. In intermediate care facilities, the director of nursing service or health services supervisor shall be a registered nurse or a licensed practical nurse by education. (B)
 - 1) This person shall have knowledge and training in nursing service administration and restorative and rehabilitative nursing. This person shall also have some knowledge and training in the care of the type of residents the facility cares for (e.g., geriatric, pediatric, or psychiatric residents). This does not mean that the director of nursing must have completed a specific course or a specific number of hours of training in restorative/rehabilitative nursing unless this person is in charge of the restorative and rehabilitative nursing program. (See Section 300.1210(b)).
 - 2) This person shall be a full-time employee who is on duty a minimum of 36 hours, four days per week. At least 50% of this person's hours shall be regularly scheduled between 7 A.M. and 7 P.M.
- A) A facility of less than 50 bed capacity may, with written approval from the Department, have two nurses share the duties of this position if it is unable to obtain a full-time person. Such an arrangement will be granted approval only through written documentation that the facility was unable to obtain the full-time services of a qualified individual to

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fill this position. Such documentation shall include, but not be limited to: an advertisement that has appeared in a newspaper of general circulation in the area for at least three weeks; the names, addresses and phone numbers of all persons who applied for the position and the reasons why they were not acceptable or would not work full-time; and information about the numbers and availability of licensed nurses in the area. The Department will grant approval only when such documentation indicates that there were no qualified applicants who were willing to accept the job on a full-time basis, and the pool of nurses available in the area cannot be expected to produce, in the near future, a qualified person who is willing to work full-time.

- B) If two persons are to share the position in an intermediate care facility, one shall be designated the Health Services Supervisor. Both of these persons may be Registered Nurses (RN), both may be Licensed Practical Nurses (LPN), or one may be an RN and the other an LPN. In the latter case, the RN shall be designated as the Health Services Supervisor and the LPN shall be designated as the Assistant Health Services Supervisor.
- C) In a facility licensed wholly or in part as a Skilled Nursing Facility, both of these persons must be RN's.
- D) In facilities with a capacity of less than 50 beds, this person may also provide direct patient care, and this person's time may be included in meeting the staff to resident ratio requirements.
- 3) In skilled nursing facilities of 100 or more occupied beds, there shall be an assistant director of nursing service or assistant health services supervisor who is a registered nurse licensed to practice in Illinois. This person shall also meet the qualifications specified in subsection (a)(1) of this Section for the director of nursing service or health services supervisor.
- 4) In intermediate care facilities of 150 or more occupied beds, there shall be a licensed nurse designated as the assistant director of nursing service or assistant health services supervisor (DONS/HSS). This person shall perform the duties of the DONS/HSS when the DONS/HSS is on vacation or extended sick leave. The assistant may provide direct patient care and be included in staff to resident ratio calculations.
- 5) The assistant shall be a full-time employee who is on duty a minimum of 36 hours, four days per week. The assistant may be assigned to work hours any time of the day or night.

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- 6) The assistant shall assist the DONS/HSS in carrying out the responsibilities of the DONS/HSS.
- 7) If the DONS/HSS or the assistant have other duties which interfere with the proper performance of their duties, another nurse shall be assigned to perform the duties of the DONS/HSS or assistant for that period of time when they are performing such other duties.
- b) The DONS/HSS shall oversee the nursing services of the facility. This person's duties shall include:
 - 1) Assigning and directing the activities of nursing service personnel.
 - 2) Planning an up-to-date resident care plan for each resident based on the resident's individual needs and goals to be accomplished, physician's orders, and personal care and nursing needs. Personnel, representing other services such as nursing, activities, dietary, and such other modalities as are ordered by the physician, shall be involved in the preparation of the resident care plan. The plan shall be in writing and shall be reviewed and modified in keeping with the care needed as indicated by the resident's condition. The plan shall be reviewed at least every three months.
 - 3) Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.
 - 4) Participating in planning and budgeting for nursing services including purchasing of necessary equipment and supplies.
 - 5) Developing and maintaining nursing service objectives, standards of nursing practice, written policies and procedures, and written job descriptions for each level of nursing personnel.
 - 6) Coordinating health services and nursing services with other resident care services such as medical, pharmaceutical, dietary activities, and any other restorative/rehabilitative services offered.
 - 7) Planning of in-service education, embracing orientation, skill training, and on-going education for all personnel covering all aspects of resident care and programming. The educational program shall include training and practice in activities and restorative/rehabilitative nursing techniques through out-of-facility or in-facility training programs. This person may conduct these programs personally or see to it that they are carried out.

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- 8) Participating in the development and implementation of resident care policies and bringing resident care problems, requiring changes in policy, to the attention of the facility's policy development group. (See Section 300.610(a).)
- 9) Participating in the screening of prospective residents and their placement in terms of services they need and nursing competencies available.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.1240 Additional Requirements

In addition to the staffing requirements in Section 300.1230, the following staffing requirements also apply to all Skilled Nursing Facilities and Intermediate Care Facilities:

- a) There shall be a licensed nurse designated as being in charge of nursing services on all shifts when neither the director of nursing or assistant director of nursing are on duty. If registered nurses and licensed practical nurses are on duty on the same shift, this person shall be a registered nurse. This person may be a charge nurse on one of the nursing units. ~~The director of nursing or assistant director of nursing will, of course, be in charge of nursing services during those shifts when they are on duty.~~ (A, B)
- b) There shall be at least one person awake, dressed and on duty at all times in each separate nursing unit. (A, B)
- c) There shall be at least one registered nurse on duty seven days per week, 8 consecutive hours, on the day shift in a skilled nursing facility. (A, B)
- d) There shall be at least one registered nurse or licensed practical nurse on duty at all times in an intermediate care facility or a skilled nursing facility. (A, B)
- e) There shall be at least one registered nurse or licensed practical nurse on duty on each floor housing residents in a skilled nursing facility. (A, B)
- f) The need for licensed nurses on each nursing unit in a skilled nursing facility and each floor or nursing unit in an intermediate care facility will be determined on an individual case basis, dependent upon the individual situation. If such additional staffing is required, the Department surveyor will inform the facility in writing of the kind and amount of additional staff time required, and the reason why it is needed.
- g) The need for an additional licensed nurse to serve as a "house supervisor" will be determined on an individual case basis. If the Department surveyor determines that there is a need for a registered nurse in a skilled nursing facility or a licensed practical nurse in an intermediate care facility on certain shifts whose sole duties will consist of

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supervising the nursing services of the facility, the Department surveyor shall notify the facility in writing when and why such a person is needed. This person shall not perform the duties of a charge nurse while serving as the "house supervisor".

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.2070 Scheduling Meals

- a) A minimum of three meals or their equivalent shall be served daily at regular times with no more than a 14 hour span between a substantial evening meal and breakfast. The 14 hour span shall not apply to facilities using the "four or five meal-a-day" plan, provided the evening meal is substantial and includes, but is not limited to, a good quality protein, bread or bread substitute, butter or margarine, a dessert and a nourishing beverage. (B)
- b) ~~Between meal or Bedtime~~ snacks of nourishing quality shall be offered ~~between meals~~ ^{at the end of} ~~at the end of one meal and the serving of the next, or as~~ ^{otherwise indicated in the resident's plan of care.} (B)
- c) If a resident refuses food served, reasonable and nutritionally appropriate substitutes shall be served. (B)

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.3060 Nursing Unit

a) General Requirements for Bedrooms

- 1) Resident bedrooms shall have an entrance directly off of a corridor with an entrance door that swings into the room. Rooms used as bedrooms and included in the licensed capacity as of December 24, 1987, which do not open directly into corridors but instead open into large living/dining/activity areas, are exempt from this subsection (a)(1). However, no additional such rooms will be permitted to be established after December 24, 1987.
- 2) Resident bedrooms shall have adequate and satisfactory artificial light and be equipped in accordance with Section 300.3140(c).
- 3) Resident toilet rooms shall open directly into a corridor or into a resident's bedroom. (B)
- 4) A closet or wardrobe at least four square feet shall be provided for each

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- 2) Provide this room with a water closet, lavatory and all other necessary facilities to meet the resident's needs and as required to care for an ill resident.
- 3) This room shall be located to provide proper and efficient supervision of the resident by the nursing staff.
- 4) This room shall be included in the authorized maximum bed capacity for the facility.
- 5) It is permissible for the room to be occupied by a resident, not in need of special care, provided the resident is clearly informed and understands he will be immediately transferred out of the room any time of day or night, whenever the room is needed to care for a resident requiring special care.

d) Nurses' Station

- 1) Provide a minimum of one nurses' station on each floor. (In skilled nursing facilities there shall be a station for each nursing unit.) The station shall have direct access to a corridor, shall be located near the area it will serve, and shall be designed to provide visual control of the area. It shall be separated satisfactorily from the nurses' utility rooms. In Intermediate Care Facilities one nurses' station serving two floors housing residents is acceptable if there are less than 15 beds on an adjacent station. (B)
- 2) At least one nurses' station shall have a medicine sink with hot and cold running water, a work counter, a medicine cabinet, and necessary equipment and furnishings. (In skilled nursing facilities each nurses' stations shall be so equipped.)
- 3) Provide a nurses' toilet and handwashing sink convenient to the nurses' station.

e) Bath and Toilet Rooms

- 1) The maximum capacity of resident beds on each floor shall be used to determine the number of fixtures required even though some of the beds may not be occupied.

- A) Provide a minimum of one water closet, one lavatory, and one bathtub or shower for each sex on each floor occupied by residents.
- B) Provide a minimum of one lavatory and one water closet for each ten

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- 5) No bedroom floor shall be more than three feet below the adjacent ground level.
- 6) Each room used as a resident bedroom shall have at least one outside window, and a total window area to the outside equal to at least one-tenth the floor area of the room.
- 7) Nurses' call system shall be provided in accordance with Section 300.3140(e). (B)
- 8) Visual privacy shall be provided for each resident in multi-bed rooms. Methods for privacy shall not restrict resident access to entry, lavatory, or toilet.

b) Resident Bedroom

- 1) Single resident bedrooms shall contain at least 100 square feet of usable floor area. Multiple resident bedrooms shall contain at least 80 square feet per bed of usable floor area. ~~Multiple bedrooms of not less than 70 square feet per bed may be approved by the Department if services can be provided.~~ Minimum usable floor area shall be exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, vestibules, or clearly definable entryways. Those bedrooms for which facilities had waivers to this subsection (b)(1) on (and continuously since) December 24, 1987, and which have at least 90 square feet for single bedrooms and 70 square feet per bed for multi-bedrooms, are exempt from this subsection (b)(1). Those bedrooms for which facilities had waivers to this subsection (b)(1) on (and continuously since) December 24, 1987, but which have less than 90 square feet for single bedrooms and 70 square feet per bed for multi-bedrooms, continue to be subject to waiver procedures on an annual basis (See Section 300.320).

- 2) Maximum room capacity shall be four residents. Beds shall be at least three feet apart, and no more than three beds deep from an outside wall. There shall be a minimum of ten feet between walls or a wall and any built in furniture or storage space.

c) Special Care Room

- 1) In Intermediate Care Facilities, provide a special care room for each 150 beds. In Skilled Nursing Facilities, provide a special care room for each 50 beds or portion thereof.

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resident beds on each floor.

- C) Provide a minimum of one bathtub or shower for each 15 resident beds on each floor.
- D) Each lavatory shall be provided with a well-illuminated mirror.
- 2) All bath and toilet rooms shall be easily accessible, and conveniently located. Group bath and toilet facilities shall be partitioned or curtained for privacy.
- 3) All showers, other than those for residents needing assistance in bathing, shall have minimum dimensions of three feet by three feet.
- 4) If toilet rooms provided adjacent to residents' bedrooms are not large enough to permit use by wheelchair residents, at least one toilet room or enclosure measuring five feet by six feet shall be provided on each floor having a resident. (In Skilled Nursing Facilities there shall be one for each sex on each floor.) Provide a lavatory usable by wheelchair residents in this room.
- 5) Provide on each floor at least one bathing facility or enclosure of not less than eight feet six inches by eight feet six inches with an acceptable system for assistance in bathing persons with physical disabilities. If a shower is installed instead of a bathtub, such shower shall have a minimum dimension of four feet wide by three feet six inches deep. These showers shall have a water inlet to which is connected a flexible hose with spray or shower head attached to the end of the hose. If desired, a conventional shower head installation may also be provided but it must be valved off from the lower water inlet.

f) Utility Rooms

- 1) Every facility shall have clean and soiled utility functions in separate rooms. There shall be at least one each of these rooms in the facility. (In Skilled Nursing Facilities there shall be at least one each of these rooms on each floor having resident bedrooms.)

2) Clean Utility Room

- A) The clean utility room shall be large enough to contain:
 - i) a work counter or table;
 - ii) a sink with drainboard;

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- iii) ample storage cabinets for clean and sterile supplies and equipment; and
- iv) an autoclave, if required, for sterilizing needles, syringes, catheters, dressings, and similar items.

- B) The autoclave may be located in the nurses' station area. The autoclave may be waived in lieu of other methods of sterilization approved by the Department.

3) Soiled Utility Room

- A) The soiled utility room shall be large enough to contain:

- i) a two compartment sink with drainboards;
- ii) ample storage cabinets;
- iii) a clinical rim flush sink for: rinsing bed pans, urinals, and linen soiled by solid materials, and similar type procedures; and
- iv) equipment and facilities for sanitizing bed pans, emesis basins, urine bottles, and other utensils, which meet accepted methods and procedures for such sanitation.

- B) Based upon approval of the program narrative, the Department will consider a waiver of this subsection for Intermediate Care Facilities.

(Source: Amended at 16 Ill. Reg. _____ effective _____)

Section 300.3100 General Building Requirements

a) Elevators

- 1) Provide a minimum of one elevator in all buildings of three or more stories in height. Additional elevators shall be provided as determined by the Department, based on the number, population, and condition of the residents. The basement, if it is used by residents, shall be considered as one story.
- 2) If 60 to 200 beds are located above the second floor, at least one additional elevator shall be provided. If over 200 beds are located above the second floor, the number of additional elevators shall be determined by the

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Department.

- 3) The administrator of the facility must be able to demonstrate to the Department the ability to transfer a patient according to physician's orders using existing elevators and elevator doors.

b) Handrails and Grab Bars

- 1) Handrails shall be provided on both sides of all corridors, stairs, and ramps. Handrails shall be one and one-half inches in diameter and one and one-half inches minimum clear of the wall. The height shall be 30 to 34 inches measured vertically from floor surface. Refer to the rules of the Capital Development Board entitled "Illinois Accessibility Code" (71 Ill. Adm. Code 400) for other acceptable handrail dimensions and details. (B)
- 2) Grab bars shall be provided at all resident toilets, showers, tubs, and sitz bath. Refer to the rules of the Capital Development Board entitled "Illinois Accessibility Code" (71 Ill. Adm. Code 400) for grab bar dimensions and details. (B)

c) Ceiling Heights

- 1) All rooms occupied by or used by residents shall have not less than eight feet ceiling height.
- 2) Corridors, storage rooms, toilet rooms and other minor rooms shall have not be less than seven feet eight inches ceiling height.
- 3) Suspended tracks, rails and pipes located in the path of traffic shall not be less than six feet eight inches above the floor.

d) Doors and Windows

- 1) Main entrance and exit doors shall swing outward and be provided with door closers and panic-hardware. (B)
- 2) All exterior doors shall be equipped with a signal that will alert the staff if a resident leaves the building. Any exterior door that is supervised during certain periods may have a disconnect device for part-time use. If there is constant 24 hour a day supervision of the door, a signal is not required. (B)
- 3) Locks installed on resident bedroom doors shall be so arranged that they can be quickly and easily unlocked from the corridor side. All such locks shall be

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arranged to permit exit from the room by a simple operation without the use of a key. The door may be lockable by the occupant if the door can be unlocked from the corridor side and the keys are carried by the attendants at all times. (B)

- 4) Resident toilet rooms shall open directly into a corridor or into a resident's bedroom. (B)
- 5) The doors for the toilet rooms used by residents shall have a minimum door width of 30 inches. (B)
- 6) No toilet or bathroom door shall be provided with hardware which could allow a resident to become locked in the room. All toilet or bathroom doors and hardware shall be designed to permit emergency egress from the room. (B)
- 7) Thresholds or parting strips in doorways used by residents shall be flush with the floor.
- 8) Doors and windows shall fit snugly and be weather tight, and shall open and close easily.
- 9) Outside doors, other than required exits, and operable windows shall be equipped with tight-fitting, 16-mesh screens. Screen doors shall be equipped with self-closing devices.
- e) Floors
- 1) Floors shall be smooth, free from cracks and finished so that they can be easily and properly cleaned. (B)
- 2) Floors in bathrooms, kitchens, and utility rooms shall be completely covered with water resistant material. (B)
- f) Walls and Ceilings
- 1) Walls and ceilings shall have sound construction, covered with plaster or sheet rock or similar material in good repair, and free from cracks or holes to permit proper cleaning.
- 2) Be constructed and maintained so as to prevent the entrance and harborage of rats, mice, flies, and other vermin.
- g) Exit corridor walls shall be one hour fire rated construction. Adjoining open spaces

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shall not be greater than 600 square feet. Facilities shall provide direct visual supervision of these open spaces and equip them with an electrically supervised smoke detection system. (B)

h) There shall be at least one approved fire extinguisher in all basements, furnace rooms, and kitchens. In addition, there shall be on each floor of the building, extinguishers located so a person will not have to travel more than 50 feet from any point to reach one. They shall be inspected annually and recharged when necessary. The date of checking and recharging shall be recorded on a tag attached to the extinguisher. (B)

i) Approved containers with proper covers shall be provided for daily storage of rubbish. (B)

j) Housekeeping throughout the building, including basements, attics, and unoccupied rooms, shall be adequately performed to minimize all fire hazards. (B)

k) Facilities shall comply with any reasonable additional fire protection measures recommended by the Department over and above these requirements or the Office of the State Fire Marshall if conditions in and around the building, including its location, indicate that such additional protection is needed. (B)

l) Facilities shall have no other business in the building which is unrelated to health care that constitutes a hazard or annoyance to the residents. In any case, the business shall be in a segregated portion of the building and shall have a separate entrance, and must be approved by the Department. Such approval will be granted only when it can be shown that the business will not interfere in any way with the residents. (A, B)

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.3310 Complaint Procedures

a) A RESIDENT SHALL BE PERMITTED TO PRESENT GRIEVANCES ON BEHALF OF HIMSELF AND OTHERS TO THE ADMINISTRATOR, THE LONG-TERM CARE FACILITY ADVISORY BOARD, THE RESIDENTS' ADVISORY COUNCIL, STATE GOVERNMENTAL AGENCIES OR OTHER PERSONS WITHOUT THREAT OF DISCHARGE OR REPRISAL IN ANY FORM OR MANNER *WHATSOEVER. (Section 2-1212 of the Act)

b) THE FACILITY ADMINISTRATOR SHALL PROVIDE ALL RESIDENTS OR THEIR REPRESENTATIVES WITH THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE APPROPRIATE STATE GOVERNMENTAL OFFICE WHERE COMPLAINTS MAY BE LODGED. (Section 2-1212 of the Act)

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c) A PERSON WHO BELIEVES THAT THE ACT OR A RULE PROMULGATED UNDER THE ACT MAY HAVE BEEN VIOLATED MAY REQUEST AN INVESTIGATION. THE REQUEST MAY BE SUBMITTED TO THE DEPARTMENT IN WRITING, BY TELEPHONE, OR BY PERSONAL VISIT. AN ORAL COMPLAINT SHALL BE REDUCED TO WRITING BY THE DEPARTMENT. (Section 3-702(a) of the Act)

d) THE SUBSTANCE OF THE COMPLAINT SHALL BE PROVIDED TO THE LICENSEE, OWNER OR ADMINISTRATOR NO EARLIER THAN AT THE COMMENCEMENT OF THE ON-SITE INSPECTION OF THE FACILITY WHICH TAKES PLACE PURSUANT TO THE COMPLAINT. (Section 3-702(b) of the Act)

e) THE DEPARTMENT SHALL NOT DISCLOSE THE NAME OF THE COMPLAINANT UNLESS THE COMPLAINANT CONSENTS IN WRITING TO THE DISCLOSURE OR THE INVESTIGATION RESULTS IN A JUDICIAL PROCEEDING OR UNLESS DISCLOSURE IS ESSENTIAL TO THE INVESTIGATION. THE COMPLAINANT SHALL BE GIVEN THE OPPORTUNITY TO WITHDRAW THE COMPLAINT BEFORE DISCLOSURE. UPON THE REQUEST OF THE COMPLAINANT, THE DEPARTMENT MAY PERMIT THE COMPLAINANT OR A REPRESENTATIVE OF THE COMPLAINANT TO ACCOMPANY THE PERSON MAKING THE ON-SITE INSPECTION OF THE FACILITY. (Section 3-702(c) of the Act)

f) UPON RECEIPT OF A COMPLAINT, THE DEPARTMENT SHALL DETERMINE WHETHER THE ACT OR A RULE PROMULGATED UNDER THE ACT HAS BEEN OR IS BEING VIOLATED. THE DEPARTMENT SHALL INVESTIGATE ALL COMPLAINTS ALLEGING ABUSE OR NEGLECT WITHIN SEVEN DAYS AFTER THE RECEIPT OF THE COMPLAINT EXCEPT THOSE COMPLAINTS OF ABUSE OR NEGLECT WHICH INDICATE THAT A RESIDENT'S LIFE OR SAFETY IS IN IMMINENT DANGER SHALL BE INVESTIGATED WITH 24 HOURS AFTER RECEIPT OF THE COMPLAINT. ALL OTHER COMPLAINTS SHALL BE INVESTIGATED WITHIN 30 DAYS AFTER THE RECEIPT OF THE COMPLAINT. ALL COMPLAINTS SHALL BE CLASSIFIED AS "AN INVALID REPORT," "A VALID REPORT," OR "AN UNDETERMINED REPORT." "INVALID" OR "INVALID". FOR ANY COMPLAINT CLASSIFIED AS "A VALID REPORT," "VALID", THE DEPARTMENT MUST DETERMINE WITHIN 30 WORKING DAYS IF ANY RULE OR PROVISION OF THE ACT HAS BEEN OR IS BEING VIOLATED. (Section 3-702(d) of the Act)

g) UPON THE REQUEST OF A RESIDENT OR COMPLAINANT, THE DEPARTMENT MAY PERMIT THE RESIDENT OR COMPLAINANT OR A REPRESENTATIVE OF THE COMPLAINANT TO ACCOMPANY THE PERSON MAKING THE ON-SITE INSPECTION OF THE FACILITY PURSUANT TO THE

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COMPLAINT. (Section 3-702(c) of the Act)

h) IN ALL CASES, THE DEPARTMENT SHALL INFORM THE COMPLAINANT OF ITS FINDINGS WITHIN TEN DAYS OF ITS DETERMINATION UNLESS OTHERWISE INDICATED BY THE COMPLAINANT, AND THE COMPLAINANT MAY DIRECT THE DEPARTMENT TO SEND A COPY OF SUCH FINDINGS TO ANOTHER PERSON. THE DEPARTMENT'S FINDINGS MAY INCLUDE CONTENTS OR DOCUMENTATION PROVIDED BY EITHER THE COMPLAINANT OR THE LICENSEE PERTAINING TO THE COMPLAINT. THE DEPARTMENT SHALL ALSO NOTIFY THE FACILITY OF SUCH FINDINGS WITHIN TEN DAYS OF THE DETERMINATION, BUT THE NAME OF THE COMPLAINANT OR RESIDENTS SHALL NOT BE DISCLOSED IN THIS NOTICE TO THE FACILITY. THE NOTICE OF SUCH FINDINGS SHALL INCLUDE A COPY OF THE WRITTEN DETERMINATION; THE CORRECTION ORDER, IF ANY; THE INSPECTION REPORT; THE OR WARNING NOTICE, IF ANY; AND THE STATE LICENSURE FORM ON WHICH THE VIOLATION IS LISTED. (Section 3-702(e) of the Act)

i) A WRITTEN DETERMINATION, CORRECTION ORDER, OR WARNING NOTICE CONCERNING A COMPLAINT SHALL BE AVAILABLE FOR PUBLIC INSPECTION, BUT THE NAME OF THE COMPLAINANT OR RESIDENT SHALL NOT BE DISCLOSED WITHOUT THE CONSENT OF THE COMPLAINANT OR RESIDENT. (Section 3-702(f) of the Act)

j) A COMPLAINANT WHO IS DISSATISFIED WITH THE DETERMINATION OR INVESTIGATION BY THE DEPARTMENT MAY REQUEST A HEARING UNDER subsection (k) of this Section ~~SUBSECTION (4) OF THIS SECTION~~. THE FACILITY SHALL BE GIVEN NOTICE OF ANY SUCH HEARING AND MAY PARTICIPATE IN THE HEARING AS A PARTY. IF A FACILITY REQUESTS A HEARING UNDER subsection (k) of this Section ~~SUBSECTION (4) OF THIS SECTION~~ WHICH CONCERNS A MATTER COVERED BY A COMPLAINT, THE COMPLAINANT SHALL BE GIVEN WRITTEN NOTICE AND MAY PARTICIPATE IN THE HEARING AS A PARTY. A REQUEST FOR A HEARING BY EITHER A COMPLAINANT OR A FACILITY SHALL BE SUBMITTED IN WRITING TO THE DEPARTMENT WITHIN 30 DAYS AFTER THE MAILING OF THE DEPARTMENT'S FINDINGS AS DESCRIBED IN SUBSECTION (h) OF THIS SECTION. UPON RECEIPT OF THE REQUEST IN SUBSECTION (h) OF THIS SECTION, CONDUCT A HEARING AS PROVIDED UNDER subsection (k) of this Section ~~SUBSECTION (4) OF THIS SECTION~~. (Section 3-702(g) of the Act)

k) Any person aggrieved by a decision of the Department rendered in a particular case which affects the legal rights, duties or privileges created under the Act may have such decision reviewed in accordance with Sections 3-703 through 3-712 of the Act.

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l) When the Department finds that a provision of Article II of the Act regarding residents' rights has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

SUBPART R: DAYCARE PROGRAMS

Section 300.3710 Day Care in Long-Term Care Facilities

a) For a licensed long-term care facility to be approved for a day care program, it is necessary that the facility meet all licensing requirements for its level of care.

b) In addition, the following criteria must also be met.

1) Staff: Sufficient and satisfactory personnel shall be on duty to provide services that meet the total needs of the day care residents, without detracting from the services given to the residents in the facility in accordance with various staffing requirements in this Part.

2) Space:

A) Dining - Adequate space and equipment available to accommodate the additional residents in accordance with Subparts J and L and Sections 300.2070 or 300.3070.

B) Activity Area - Large enough area to accommodate capacity of facility, plus additional "Day Care" residents in accordance with Sections 300.2870 or 300.3070.

C) Rest Area - A definite area should be designated as an area available for the Day Care resident to nap or rest. This area should be equipped with beds (roll-aways can be used) or cots and portable screens. There should also be adequate space available for personal items storage for the number of Day Care residents being cared for. Suggested areas which can be utilized for the Day Care resident could include:

i) Facilities having more than one communal area (such as a lounge, sunporch, and other areas) could designate one of these for rest areas;

ii) Non-occupied rooms (no one assigned to these rooms);

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iii) Toilets - Adequate number to accommodate extra number of residents in accordance with Sections 300.2860 and 300.3060.

3) Records:

A) A statement by a physician who has evaluated the resident within the last 30 days stating the resident is free of communicable and infectious disease, and indicating any medication and treatments and diet needed by the resident during the period of time in the facility. Permission should also be granted in this statement for the resident to participate in activities with any contraindications or limitations.

B) Medication and Treatment record - Required for any medications or treatments given during resident stay in the facility. (Medications must be in original containers and properly labeled.)

C) "Face" sheet or admission sheet - Containing all pertinent information necessary for the "safe keeping" of the resident such as complete name; address; telephone number, social security number, medicare number, and age of resident; name, business, and home address, and telephone number of person to notify in an emergency; name of family physician; name of physician to call in an emergency.

D) Incident Report - in case of medication error or accident of any kind.

4) There must be written policies covering "Day Care" Service in the facility which explain implementation of this section.

5) Permission for a Day Care Program requires identifying the services of the facility that will be used in the program. Examples: Activity area, dining area, administering of medications by nursing staff, physical therapy, speech, and social services.

6) The maximum number of "Day Care" residents served shall be reported with the application under Section 300.160~~640~~ of this Part.

7) The facility shall consider the following in developing and providing "Day Care Programs":

A) Use of house or advisory physician for emergencies;

B) Insurance coverage;

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C) Signed agreement with family or responsible individual;

D) Permission to be involved in activities outside of the facility (in the community);

E) Attendance record; and

F) Facility should be aware of method and time of pick-up and delivery of the Day Care residents.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 300.APPENDIX B Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)

A long-term care facility may have one or more distinct parts within the facility classified for sheltered care, intermediate care, or skilled nursing care, if the following criteria are satisfactorily met:

1. The distinct part meets the definition of "Distinct Part" as given in Section 300.330 of these standards.
2. The distinct part satisfactorily meets the applicable physical plant standards based on the level of service classification sought for that distinct part. If necessary to protect the health, welfare, and safety of patients and/or residents in a distinct part requiring higher standards, the Department shall require compliance with whatever additional physical plant standards are necessary in any distinct part(c), with lower applicable standards, to achieve this protection.
3. There is separate nursing, auxiliary, and/or personal care staff sufficient in numbers, training, and experience for each distinct part to meet the standards applicable to the classification of the distinct part. Administrative, supervisory, and other personnel may be shared by the entire facility, if so doing does not adversely affect meeting the total needs of any of the patients and/or residents in the facility.
4. No patient or resident is kept in a distinct part classified for a lower level of service than he requires.

(Source: Repealed at 16 Ill. Reg. _____ effective _____)

1) Heading of the Part:

Structural Pest Control Code

2) Code Citation:

77 Ill. Adm. Code 830

3) Section Numbers:

830.10
830.880
830.885
830.890
830.900

Proposed Action:

Amendment
Amendment
Amendment
Amendment
Amendment

4) Statutory Authority:

Illinois Structural Pest Control Act

Ill. Rev. Stat. 1989, ch. 111 1/2, par. 2201 et seq.

5) A Complete Description of the Subjects and Issues Involved:

This rulemaking will exempt commercial pest control businesses using avicides for which a permit is not required from filing a notification of bird control form with the Department. The rulemaking removes an exception from obtaining an avicide permit for the control of less than 75 protected birds with specified avicides. In addition, the rulemaking clarifies the type of information needed on the avicide permit application and the time period for review of such permit applications by the Illinois Department of Conservation. Finally, the rulemaking deletes an obsolete grandfather clause relating to bird control training seminar requirements, and clarifies the definition of avicide to exclude certain repellents.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect?

Yes — No X

7) Does this Rulemaking Contain an Automatic Repeal Date?

Yes — No X

If "yes," please specify the date: _____

8) Does this Rulemaking Contain Any Incorporations By Reference?

Yes — No X

If "yes," please specify type: 6.02(a)___ or 6.02(b)___

9) Are there any other Proposed Amendments Pending on this Part?

Yes — No X

If Yes:

Section Numbers Proposed Action Ill. Reg. Citation

10) Statement of Statewide Policy Objectives:

No adverse impact on local government

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking:

Interested persons may present their comments concerning these rules by writing to Gail M. DeVito, Division of Governmental Affairs, Illinois Department of Public Health, 535 West Jefferson, Fifth Floor, Springfield, Illinois 62761 within 45 days after this issue of the Illinois Register.

These rules may have an impact on small businesses. In accordance with Sections 3.01 and 4.03 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 3.10 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Date Rulemaking was Submitted to the Business Assistance Office of the Department of Commerce and Community Affairs:

B) Type of Small Businesses Affected:

Structural Pest Control Businesses

C) Reporting, Bookkeeping or Other Procedures Required for Compliance:

Reporting

D) Types of Professional Skills Necessary for Compliance:

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER 0: PEST CONTROL

PART 830
STRUCTURAL PEST CONTROL CODE

SUBPART A: GENERAL

Section

830.10 Definitions
830.20 Incorporated Materials

SUBPART B: GENERAL REQUIREMENTS

830.100 License Application for Commercial Structural Pest Control Business Location
830.110 Registration Application for Non-Commercial Structural Pest Control Location
830.120 Application for Examination as a Certified Structural Pest Control Technician
830.130 Re-examination Applications
830.140 Application of Certified Technicians for Examination in Other Sub-categories
830.150 Processing (Repealed)
830.160 Approved Applications (Repealed)
830.170 Disapproved Applications (Repealed)
830.180 License and Registration Renewals
830.190 Change of Business Ownership
830.200 Certification Renewals
830.210 Late Filing Charge
830.220 Non-renewal of Technician Certificates
830.230 Certified Technician at Each Location
830.240 Change of Certified Technician at Place of Employment
830.250 Certificates of Insurance
830.260 Insurance Coverage
830.270 Supervision of a Non-certified Technician
830.280 Inspections and Investigations (Repealed)
830.290 Classification of Pesticides
830.300 Application for Certification in Illinois as a Structural Pest Control Technician by Reciprocity

830.310 Display of License, Registration and Certification
830.315 Procedures for Certification as a Structural Pest Control Technician in Wood Products Pest Control (Repealed)

SUBPART C: EXAMINATIONS

830.400 General Provisions

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830.410 Examinations
830.420 Examination Schedules (Repealed)
830.430 Grades
830.440 Notification of Examination Results
830.450 Confidentiality of Examination Scores
830.460 Examinee's Review of Examination

SUBPART D: PEST CONTROL COURSES

830.500 Application
830.510 Application (Repealed)
830.520 Instructors
830.530 Pest Control Course Description
830.540 Record of Completion
830.550 Pest Control Course Evaluation
840.560 Approval (Repealed)
830.570 Disapproval of an Application or Recision of Approval (Repealed)

SUBPART E: PEST CONTROL TRAINING SEMINARS (RECERTIFICATION)

830.600 Application
830.610 Application (Repealed)
830.620 Instructors
830.630 Pest Control Seminars
830.640 Record of Completion
830.650 Pest Control Seminar Evaluation
830.660 Approval (Repealed)
830.670 Disapproval of an Application or Recision of Approval (Repealed)

SUBPART F: HEARINGS

830.700 Hearings

SUBPART G: SAFE PESTICIDE STORAGE AND HANDLING

830.800 General Safety Precautions
830.810 Misuse of Pesticides
830.820 Records
830.830 Pesticide Storage Area
830.840 Service Vehicles
830.850 Pesticide Storage Practices
830.860 Orders to Stop Sale, Use, Seize or Regulate Removal
830.870 Hazardous Incident Notification and Abatement

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SUBPART H: BIRD CONTROL REQUIREMENTS

- 830.880 Avicide Permit Requirements
- 830.885 Denial or Revocation of Avicide Permits
- 830.890 Bird Control Monitoring and Reporting Requirements
- 830.900 Bird Control Training Requirements

Illustration A WARNING SIGN - PESTICIDE TREATMENT & VENTILATION
Illustration B RESTRICTED USE PESTICIDE SIGN

AUTHORITY: Implementing and authorized by the Structural Pest Control Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 2201 et seq.) Illinois Pesticide Act (Ill. Rev. Stat. 1989, ch. 5, par. 801 et seq., in particular 803(2), and Section 11(b) of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1989, ch. 8, par. 341(b)) and the Federal Migratory Bird Treaty Act (16 U.S.C., 703 et seq.).

SOURCE: Adopted at 2 Ill. Reg. 19, p. 159, effective May 3, 1978; codified at 8 Ill. Reg. 18492; emergency amendment at 10 Ill. Reg. 17812, effective September 28, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 7736, effective April 15, 1987; amended at 13 Ill. Reg. 2090, effective February 3, 1989; emergency amendments at 14 Ill. Reg. 1036, effective December 22, 1989, for a maximum of 150 days; emergency amendment lapsed on May 21, 1990; amended at 14 Ill. Reg. 12889, effective August 1, 1990; amended at 16 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 830.10 Definitions

In addition to the definitions contained in the Structural Pest Control Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 2201 et seq.), the following definitions, when used herein, shall apply:

"Act" means the "Structural Pest Control Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 2201 et seq.)."

"Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate a pest.

"Applicant" means any person making an application for a license, registration, examination or certification.

"Avicide" means a pesticide used for bird control, other than a device, which is designed to ~~or will~~ kill birds when used in a manner consistent with its labeling.

"Back flow preventer or vacuum breaker device" means a device, approved by the Illinois Plumbing Code (77 Ill. Adm. Code 890) used to prevent backflow or

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backphonage of contaminated water or liquid into a water supply system.

"College or university course in related field" means three semester hours or four quarter hours of a college course in biological sciences, physics or chemistry.

"Crack and crevice treatment" means the application of small amounts of a pesticide directly into a crack, crevice, expansion joint, between different elements of construction, between equipment and floors, or into an opening that leads into voids such as hollow walls, equipment legs and bases, conduits, motor housings, junction or switch boxes, where insects may be present.

"Department" means the Illinois Department of Public Health.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act.

"File a renewal application" means the process of completing the renewal form and submitting it to the Department along with the applicable renewal fee as set forth in Section 9 of the Act and evidence either attached to the renewal form or on file with the Department which would indicate that the license, certification or registration renewal requirements of Sections 4(e) and 6 of the Act and Sections 830.180 and 830.200 of this Part have been met.

"Food area" means an area where food is handled, received, packaged, held, processed, prepared, or served.

"Insurance company authorized to transact business" means an insurance company which has been issued a Certificate of Authority by the Director of the Department of Insurance.

"Manner inconsistent with its labeling" means the use of a pesticide in a manner not permitted by the labeling, but does not include, unless USEPA or the pesticide manufacturer indicates to the contrary via written statements prior to the treatment that such use would not be advisable or if it is deleterious to man or his environment, the application of a pesticide which will eliminate or control a pest: at a dosage, concentration or frequency less than specified on the labeling; for a target pest not identified on the labeling as long as the application site is addressed and the labeling does not prohibit the use; or by a method of application not prohibited by the labeling. Termiticides, however, shall be applied in accordance with the product labeling, unless there are written statements from the manufacturer prior to treatment that indicates that another use is more appropriate.

"Method" means any action or procedure used to determine the presence or absence of a pest.

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"Pest control course" means an educational program which addresses the basic theoretical or practical knowledge of pesticides and their application, approved by the Department pursuant to Subpart D of this Part, and is equivalent to six months experience for original certification.

"Pest control specialist" means a person who has a degree from a recognized college or university in one or more fields related to structural pest control and/or pesticides or has a specialized area of interest pertaining to chemical manufacturing and/or research, chemistry, entomology, or environmental sanitation and engineering.

"Pest control training seminar" means a recertification training program which provides the technical and legal aspects of present structural pest control technology, approved by the Department pursuant to Subpart E of this Part.

"Purchasing group" means a purchaser of group insurance which group has registered with the Director of the Department of Insurance.

"Recognized college or university" means an educational institution which has been recognized or approved by the Board of Higher Education, or equivalent, in the State in which it is located; and/or an educational institution accredited by a regional accrediting association recognized by the Council on Post Secondary Accreditation.

In either instance, the college or university must be authorized to confer a degree in the fields of Biological Sciences, Entomology, Zoology, or related fields.

"Risk retention group" means an insurance company incorporated and licensed in one of the states of the United States and registered with the Director of the Department of Insurance.

"Service container" means any non-food container utilized to temporarily hold, store or transport a pesticide concentrate or registered ready-to-use product other than the original labeled container provided by the manufacturer, the measuring device or the application device.

"Signal word" means a word or phrase found prominently displayed on the pesticide label which offers an indication of the toxicity and potential danger of a pesticide.

"Treatment period" means the period of time necessary for a room or area to remain closed to unauthorized individuals in order to allow an effective treatment and subsequent drying or settling of the pesticide in accordance with label directions or, in their absence, manufacturer's recommendations.

"USEPA" means the United States Environmental Protection Agency.

"Work Site" means and includes any location at which pesticides are handled, mixed,

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stored, or applied.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

SUBPART H: BIRD CONTROL REQUIREMENTS

Section 830.880 Avicide Permit Requirements

a) Other than 20,25 diazacholestol, restricted uses of 4-aminopyridine, and restricted uses of 3-chloro-p-toluidine hydrochloride, the use of restricted or general use avicides for the control of any number of pigeons or starlings, or house sparrows in flocks over 500, or any number of other pest birds in flocks of 75 or more, is prohibited, unless such avicide is applied by a commercial structural pest control licensee or by a non-commercial structural pest control location having an Avicide Permit (Form # IL 482-0722) obtained as described in this Subpart, except for such avicide use for pest bird control by a non-commercial structural pest control location engaged in the production, protection, care, storage, or transportation of agricultural commodities or already regulated by the Illinois Pesticide Act.

b) Any other use of avicides not requiring a permit requires that the avicide user notify the Department within 5 business days of such use by submitting a Notification of Bird Control form, supplied by the Department, providing the information below:

- 1) User information including the user or company name, license number (if applicable), address, city, state, zip code, telephone number, the name of the supervising technician, the technician's certificate number (if applicable), and telephone number.
 - 2) Site information including the name of the site, name of a contact person located at the site, street address or lot number, city, state, zip code, county, or township, range, section, or directions to the site (i.e., subdivision lot number, highway number, secondary roads, signs to follow, etc.) of the bird control operation. Instead of a description of the location, a map of the bird control operation site may be attached to the Notice.
 - 3) Species and estimated number of birds.
 - 4) Brand name and EPA registration number of the avicide.
- be) Restricted avicides must be used, or their use supervised on-site, by a person certified in the sub-category of bird control.

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cd) To request an Avicide Permit, a person shall apply on a form (Form IL # 482-0722), prepared and supplied by the Illinois Department of Public Health, at least fourteen (14) days before the proposed use of pesticides for the control of pest birds. The Avicide Permit Application Form (Form IL # 482-0722) shall contain the following information:

- 1) Applicant information including the applicant or company name, license number if applicable, address, city, state, zip code, telephone number, the name of the supervising technician as required in Section 830.880(g)(2), the technician's certificate number (if applicable), and telephone number.
- 2) Site information including the name of the site, name of a contact person located at the site, street address or lot number, city, state, zip code, county, or township, range, section; or directions to the site (i.e., subdivision lot number, highway number, secondary roads, signs to follow, etc.) of the proposed bird control operation. Instead of a description of the location a map of the bird control operation site may be attached to the application.
- 3) Bird survey information including the target bird species and estimated population of each target species. Describe or attach a diagram of the observed feeding, watering, roosting, and loafing sites of the target species. Note if the target pest bird is within or outside of a structure and if the structure is enclosed or open. List observed non-target bird species that are associated with, or are using the same feeding, watering, roosting, or loafing areas as the target birds.

- A) Describe what problem the birds are causing that requires control. List the brand name of the avicide, EPA registration number, chemical name and percent as listed under active ingredients on the label. Estimate the amount of the product that will be used as purchased from the manufacturer in units of measurement as applied. Give the estimated beginning and ending dates of the program as well as the schedule or frequency of application of the avicide.
- B) Explain what non-avicular methods are being used. List which non-avicular methods have been evaluated and not used and if non-avicular methods are not being used, explain why they have not been used provide an explanation. Explain how, by whom and on what schedule the carcasses of killed birds will be retrieved from the control site and surrounding area.

de) A person shall obtain a separate Avicide Permit (Form IL # 482-0722) for each structure for which bird control is needed, except that multiple structures on the same or contiguous pieces of property require only one Avicide Permit.

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ef) In compliance with Section 11(b) of the Endangered Species Protection Act (Ill. Rev. Stat. 1989, ch. 8, par. 341(b)), the Department shall submit a copy of the Avicide Permit application to the Illinois Department of Conservation for a 14 day comment period. The Department, in consultation with the shall take the Illinois Department of Conservation comments into consideration; when it places may place time, space, volume, coverage, concentration, or other special restrictions on the Avicide Permit to reduce the risk to non-target and Illinois endangered or threatened species as listed in 17 Ill. Adm. Code 1010.

fg) The Department shall assign an expiration date to the Avicide Permit or Notification of Bird Control Form; based on the time required to complete the control of pest birds, that will not exceed one year from the date of issuance. The applicant may request an earlier expiration date. The permit holder's use of avicides that required a permit or notification shall stop on the current expiration date of the permit unless a new Avicide Permit is issued by the Department or a new Notification of Bird Control form is received within 5 days of the previous notification's expiration.

gh) Upon receipt of a completed application, the Department shall issue the Avicide Permit to the applicant if:

- 1) The Avicide Permit applicant is currently a licensed commercial structural pest control business or is a non-commercial structural pest control location, as defined in Section 3.13 of the Act, proposing to use avicides at such locations, and;
- 2) The Avicide Permit applicant employs at least:
 - A) One person certified in the sub-category of Bird Control who shall supervise at the work site the use of any restricted, non-restricted, or general-use avicide, or
 - B) One person who has successfully completed a Bird Control Training seminar as described in Section 830.900 of this Part who shall supervise at the work site only the use of non-restricted or general-use avicides, and
- 3) The proposed bird control program does not pose undue risks to health, property, or non-target wildlife, such risks determined by the health benefits, the behaviors of the likely non-target predator and its prey, the proposed amount of pesticide, the intrinsic toxicity of the pesticide, the risk of exposure to the pesticide, and other relevant health and environmental factors as each case requires.

hi) The Department shall send a copy of the Avicide Permit to the Illinois Department of

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Conservation when it is issued to the applicant.

- ii) A new permit must be applied for if; 1) the target flock moves to a location other than as described on the permit or increases in number by 50% or more; 2) the amount of avicide needed exceeds the estimate on the permit by 20% or more or; 3) any other changes from the original permit occur, other than a decrease in the number of the target flock or a decrease in the amount of avicide used.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 830.885 Denial or Revocation of Avicide Permits

- a) The Department may deny or revoke an Avicide Permit or Avicide Permit application:

- 1) For failure to meet any of the requirements for granting the permit as specified in subsection 830.880(g) of this Part, or
- 2) For failure to conduct the bird control program in accordance with the information furnished on the Avicide Permit application (Form IL # 482-0722) as described in Section 830.880 of this Part, or
- 3) For knowingly providing false or inaccurate information on the Avicide Permit application, or
- 4) For failure to abide by any special restrictions placed on the Avicide Permit under Section 830.880(e) of this Part, or
- 5) For failure to ~~consider~~ use suitable, effective non-avicular bird control measures such as devices or procedures including, but not limited to, netting, chemical or mechanical perch repellents, shooting, trapping or electrocution, or
- 6) For failure to select and use avicides according to label directions, or
- 7) For failure to ensure the effective collection of dead or dying birds, or
- 8) For failure to monitor and record target and non-target birds and animals killed as required in Section 830.890 of this Part, or
- 9) For failure to submit a Target and Non-Target Bird Census Form (IL # 482-0723) ~~at 90-day intervals~~ as required by Section 830.890 of this Part, or
- 10) For failure to abide by other conditions of the Act or this Section that apply to

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the structural pest control operations being conducted, or

- 11) At the recommendation of the Interagency Committee on Pesticides acting under Section 19 of the Illinois Pesticide Act (Ill. Rev. Stat. 1989, ch. 5, par. 819, as amended), or
- 12) After any illness or death of any hawk or owl (Order Falconiformes or Strigiformes), or any animal listed as endangered or threatened in 17 Ill. Adm. Code 1010 as a result of permitted structural pest control for pest birds as determined by autopsy and toxicological analysis arranged for by the Department according to Section 830.890(c) or other reasonable evidence.

- b) Before revoking an Avicide Permit, or denying a permit when a completed application has been received, the Department shall notify the permit holder or applicant in writing and provide such person with an opportunity for an administrative hearing as described in Section 15 of the Act.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 830.890 Bird Control Monitoring and Reporting Requirements

- a) The Avicide Permit holder shall retrieve, identify, accurately estimate the number of, and dispose of according to label directions visible target pest birds killed as a result of the structural pest control activities of the Avicide Permit holder, unless the Department has directed the permit holder in writing to hold them for examination by the Department.
- b) In compliance with the Migratory Bird Treaty Act, the Avicide Permit holder shall immediately notify the Department of, or turn over to the Department, all raptors (Order Falconiformes or Strigiformes) that are found dead, or appear ill, within 20 miles of the control site for the time that the permit is in effect plus two weeks. The Department shall be notified by the permit holder of all other known deaths of non-target birds and animals during the permit period within 1 mile of the control site in order to be in compliance with Section 830.870 and 830.890(d) of this Part.
- c) When possible, the Department will determine if a killed raptor from the area of a bird control operation died as a result of the bird control operation by arranging for autopsy and toxicological analysis by a State or Federal laboratory. The Department shall send these test results to the Avicide Permit holder, the Illinois Department of Conservation, and the U.S. Fish and Wildlife Service.
- d) ~~Within 90 days of the date the~~ Prior to the expiration of the Avicide Permit ~~is issued and every 90 days thereafter until the expiration of the Avicide Permit,~~ the Avicide

NOTICE OF PROPOSED AMENDMENTS

Permit holder shall submit a completed Target and Non-Target Bird Census form (Form IL # 482-0723) to the Department that lists the location, species, number, and dates that birds or animals that were collected or found in accordance with subsection (a) and subsection (b) above.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

Section 830.900 Bird Control Training Requirements

a) In order to successfully complete a Bird Control Training Seminar, the participant must correctly answer at least 70% of the questions on a test administered by the Department at a Bird Control Training Seminar. The test may be retaken without attending the Bird Control Training Seminar only by previous Bird Control Training Seminar participants by appointment with the Department.

b) A Bird Control Training Seminar shall meet all the requirements of Section 830.600 of this Part, except that only a one-week advance notice to the Department is required for seminar approval or Department participation in Bird Control Training Seminars conducted before May 1, 1990. Beginning on May 1, 1990, all the advance notice requirements in Section 830.600 must be met.

c) A Bird Control Training Seminar shall meet all the requirements of Section 830.620 and Section 830.650 of this Part.

d) A Bird Control Training Seminar shall meet all the requirements of Section 830.630 of this Part, except that

1) At a minimum, the Bird Control Training Seminar shall cover the relationship to bird control of the subjects described in Section 830.530 (c), Section 830.530 (d), Section 830.530 (h), and Section 830.530(k) of this Part, and

2) The Bird Control Training Seminar shall last a minimum of 4 classroom contact hours with an additional one (1) hour set aside for a Department administered test as required in subsection (a) above.

e) The Sponsor of a Bird Control Seminar shall comply with all the provisions of Section 830.640 of this Part.

(Source: Amended at 16 Ill. Reg. _____, effective _____)

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Americans With Disabilities Act Grievance Procedure
- 2) Code Citation: 4 Ill. Adm. Code 350
- 3) Section Number: Proposed Action:
350.110 New Section
350.120 New Section
350.130 New Section
350.140 New Section
350.150 New Section
350.160 New Section
350.170 New Section
350.180 New Section
- 4) Statutory Authority: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12143), as specified in Title II regulations (28 CFR 35.107), and authorized by the Treasurer (Ill. Rev. Stat. 1989, ch. 130, par. 17.1).
- 5) A Complete Description of the Subjects and Issues Involved:
As required by the Americans with Disabilities Act of 1990, these proposed rules establish a procedure whereby qualified persons with disabilities may resolve allegations of denial of public services on the basis of disability.
- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: These rules will not create or enlarge a State mandate.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45

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days of the publication of this notice to:

David Vaught
Office of the Treasurer
Suite 15-600, State of Illinois Center
Chicago, IL 60601
(312) 814-3571

12) Initial Regulatory Flexibility Analysis:

- A) Date rules were submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 27, 1992.
- B) Types of small businesses affected: The grievance procedure set forth in this Part will not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance: Small businesses will not be required to undertake any reporting or bookkeeping activities pursuant to this Part.
- D) Types of professional skills necessary for compliance: No professional skills are required of small businesses pursuant to this Part.

The full text of the Proposed Rules begins on the next page.

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NOTICE OF PROPOSED RULES

TITLE 4: DISCRIMINATION PROCEDURES
CHAPTER XI: TREASURER

PART 350

AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

Section	Purposes
350.110	Definitions
350.120	Procedure
350.130	Designated Coordinator Level
350.140	Review Panel
350.150	Final Level
350.160	Accessibility
350.170	Case-by-Case Resolution
350.180	

AUTHORITY: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II regulations (28 CFR 35.107), and authorized by the Treasurer (Ill. Rev. Stat. 1989, ch. 130, par. 17.1)

SOURCE: Adopted at 16 Ill. Rev. _____, effective _____

Section 350.110 Purposes

- a) This Part establishes an Americans With Disabilities Act Grievance Procedure (Procedure) pursuant to the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (ADA), and specifically Section 35.107 of the Title II regulations (28 CFR 35.107) requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator.
- b) In general, the ADA requires that each program, service, and activity offered by the Treasurer, when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.

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- c) It is the intent of the Treasurer to foster communication with all individuals requesting ready access to programs, services and activities. The Treasurer encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

Section 350.120 Definitions

"Complainant" is an individual with a disability who files a grievance form provided by the Office in accordance with this Part.

"Designated Coordinator" is the person appointed by the Treasurer to coordinate the Office's efforts to comply with and carry out its responsibilities under Title II of the ADA, including investigation of grievances filed by complainants. The Designated Coordinators for the Office are Simone McNeil and Rhonda Poeschel. Ms. McNeil can be contacted at Suite 15-600, State of IL Center, Chicago, IL 60601 or by telephone at (312) 814-3571 and Ms. Poeschel can be contacted at 300 West Jefferson, Springfield, IL 62702 or by telephone at (217) 782-6540.

"Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.

"Grievance" is any complaint under the ADA by an individual with a disability who meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Office, and who believes he or she has been excluded from participation in or denied the benefits of any program, service or activity of the office, or has been subject to discrimination by the Office, on the basis of his or her disability.

"Qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or

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the participation in programs or activities provided by the Office.

Section 350.130 Procedure

- a) Grievances shall be submitted in accordance with the procedures established in Sections 350.140 of this Part, in the form and manner described, and within specified time limits. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the reviewer at the Designated Coordinator and Final Levels.
- b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure, within the specified time limits shall mean that the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure as the Office's final response.
- c) The Office shall, upon being informed of an individual's desire to file a formal grievance, instruct the individual how to receive a copy of this procedure and the grievance form.

Section 350.140 Designated Coordinator Level

- a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the grievance form prescribed for that purpose. The grievance form shall be completed in full in order to receive proper consideration by the Designated Coordinator, and shall include:

- 1) the complainant's name and, if applicable, address and telephone number;
- 2) the best means and time for contacting the complainant;
- 3) the program, activity or service which was denied complainant or in which alleged discrimination occurred;
- 4) the date and nature of the alleged denial or discrimination;

TREASURER

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- 5) the signature of the complainant.
- b) Upon request, assistance shall be provided by the Office to complete the grievance form.
- c) The Designated Coordinator shall investigate the grievance and shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and to the Treasurer within ten (10) business days after receipt of the grievance form.

Section 350.150 Review Panel

- a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Treasurer for final review. The complainant shall submit these documents to the Treasurer, together with a short written statement explaining the reason(s) for dissatisfaction with the Designated Coordinator's written response, within five (5) business days after receipt by the complainant of the Designated Coordinator's response.

- b) The Treasurer shall appoint a 3-member panel to review the grievance at the Final Level. One member so appointed shall be designated chairman.

- c) The complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his/her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it deems appropriate.

- d) Upon reaching a concurrence, the panel shall make recommendations in writing to the Treasurer as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make recommendation to the Treasurer in writing and shall also sign such recommendation.

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Section 350.160 Final Level

- a) Upon receipt of recommendations from a panel, the Treasurer shall approve, disapprove or modify the Panel recommendations, shall render a decision thereon in writing, shall state the basis therefore, and shall cause a copy of the decision to be served on the parties. The Treasurer's decision shall be final. If the Treasurer disapproves or modifies the Panel recommendations, the Treasurer shall include written reasons for such disapproval or modification.

- b) The grievance form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the recommendations of the panel and the decision of the Director shall be maintained in accordance with the State Records Act, Ill. Rev. Stat. 1989, Ch. 116, par. 43.3 et seq., or as otherwise required by law.

Section 350.170 Accessibility

The Treasurer shall ensure that all stages of the grievance procedure are readily accessible to and usable by individuals with disabilities.

Section 350.180 Case-by-Case Resolution

Each grievance involves a unique set of factors which include, but are not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and, whether or not an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Office. Accordingly, termination of a grievance at any level, whether through the granting or relief or otherwise, shall not constitute a precedent on which any other complainants should rely.

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

1) Heading of Part: Americans With Disabilities Act Grievance Procedure

2) Code Citation: 95 Ill. Adm. Code 122

3) Section Numbers: Proposed Action:

122.10	New
122.20	New
122.30	New
122.40	New
122.50	New
122.60	New
122.70	New

4) Statutory Authority: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II regulations (28 CFR 35.107), and authorized by an Act creating the Illinois Department of Veterans' Affairs (Ill. Rev. Stat. 1989, ch. 126 1/2, par. 66 and 67)

5) A Complete Description of the Subjects and Issues Involved: As required by the Americans With Disabilities Act of 1990, these proposed rules establish a procedure whereby qualified persons with disabilities may resolve allegations of denial of public services on the basis of disability.

6) Will These Proposed Amendments Replace an Emergency Rule Currently in Effect?
No

7) Does This Rule Making Contain an Automatic Repeal Date:
No

8) Do These Proposed Amendments Contain Incorporations by References?
No

9) Are There Any Other Proposed Amendments Pending on This Part?
No

10) Statement of Statewide Policy Objectives?
N/A

11) Time, Place and Manner By Which Interested Persons May Comment on This Proposed Ruling? Interested persons can submit written comments within 45 days of the date of the publication to:

Robert E. Foster
Deputy Director for Administration
State of Illinois
Department of Veterans Affairs
P.O. Box 19432
833 South Spring Street
Springfield IL 62794-9432

12) Initial Regulatory Flexibility Analysis
N/A

The full text of the proposed rules begins on the next page:

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

TITLE 95: VETERANS AND MILITARY AFFAIRS
CHAPTER I: Department of Veterans' Affairs
Part 122

AMERICANS WITH DISABILITIES GRIEVANCE PROCEDURE

Section

122.10 General Purposes

122.20 Definitions

122.30 Procedure

122.40 Designated Coordinator/Designated Liaison Level

122.50 Final Level

122.60 Accessibility

122.70 Case-by-Case Resolution

AUTHORITY: Implementing Title II, Subtitle A of the Americans With Disabilities Act of 1990 (42 U.S.C. 12131-12134), as specified in Title II regulations (28 CFR 35.107), and authorized by An Act creating the Illinois Department of Veterans' Affairs (Ill. Rev. Stat. 1989, ch. 126 1/2, par. 66 and 67)

SOURCE: Adopted at 16 Ill. Reg. _____, effective _____,

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

SECTION 122.10 General Purposes

- a) This ADA Grievance Procedure ("Procedure") is established pursuant to the Americans with Disabilities Act of 1990, 42 USC Section 122.10 et seq., ("ADA") and specifically Section 35.107 of the Title II regulations, 28 CFR Part 35, requiring that a grievance procedure be established to resolve grievances asserted by qualified individuals with disabilities. Should any individual desire to review the ADA or its regulations to understand the rights, privileges and remedies afforded by it, please contact the Designated Coordinator.
- b) In general, the ADA requires that each program, service, and activity offered by the Department, when viewed in its entirety, be readily accessible to and usable by qualified individuals with disabilities.
- c) It is the intention of the Department to foster open communication with all individuals requesting readily accessible programs, services and activities. The Department encourages supervisors of programs, services and activities to respond to requests for modifications before they become grievances.

Section 122.20 Definitionsa) Grievance

A grievance is any complaint under the ADA by an individual with a disability who:

- 1) meets the essential eligibility requirements for participation in or receipt of the benefits of a program, activity or service offered by the Department, and
- 2) believes he or she has been excluded from participation in, or denied the benefits of any program, service or activity of the Department of has been subject to discrimination by the Department.

b) Complainant

A complainant is an individual with a disability who files a Grievance Form provided by the Department under this procedure.

c) Designated Liaison

The Designated Liaisons are the persons appointed by the Director who are located in the Illinois Veterans Home Sites, and Field Sites who are responsible for collecting and forwarding grievances filed by complainants to the Designated Coordinator.

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

Section 122.20 Definitions (cont.)**d) Designated Coordinator**

The Designated Coordinator is the person(s) appointed by the Department Director who is/are responsible for the coordination of efforts of the Department to comply with and carry out its responsibilities under Title II of the ADA including investigation of grievances filed by complainants. See 28 CFR 35.107.

Section 122.30 Procedure

a) Grievances must be submitted through the channels defined below in the form and manner as described within the specified time limits. It is mutually desirable and beneficial that grievances be satisfactorily resolved in a prompt manner. Time limits established in this procedure are in calendar days, unless otherwise stated, and may be extended by mutual agreement in writing by the complainant and the reviewer at the Designated Coordinator and Final Levels.

b) A complainant's failure to submit a grievance, or to submit or appeal it to the next level of procedure within the specified time limits shall mean that the complainant has withdrawn the grievance or has accepted the last response given in the grievance procedure as the Department's last response.

c) The Department shall, upon being informed of that individual's desire to file a formal grievance, instruct the individual how to receive a copy of this Procedure and the Grievance Form.

Section 122.40 Designated Coordinator/Designated Liaison Level

a) If an individual desires to file a formal written grievance, the individual shall promptly, but no later than 180 days after the alleged discrimination, submit the grievance to the Designated Coordinator in writing on the Grievance Form prescribed for that purpose. The Grievance Form must be completed in full in order to receive proper consideration by the Designated Coordinator/Designated Liaison.

b) Upon request, assistance shall be provided by the Department to complete the Grievance Form.

c) The Designated Coordinator, or the Designated Liaison, shall investigate the grievance and shall make reasonable efforts to resolve it. The Designated Coordinator shall provide a written response to the complainant and Director within ten (10) business days after receipt of the Grievance Form.

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

Section 122.50 Final Level

a) If the grievance has not been resolved at the Designated Coordinator Level to the satisfaction of the complainant, the complainant may submit a copy of the Grievance Form and Designated Coordinator's response to the Director of the Department for final review. The complainant shall submit these documents to the Director, together with a short written statement explaining the reason(s) for dissatisfaction with the Designated Coordinator's written response, within five (5) business days after receipt by the complainant of the Designated Coordinator's response.

b) The Director shall appoint a 3-member panel to review the grievance at the Final Level. One member so appointed shall be designated chairman.

c) The complainant shall be afforded an opportunity to appear before the panel. Complainant shall have a right to appoint a representative to appear on his/her behalf. The panel shall review the Designated Coordinator's written response and may conduct interviews and seek advice as it seems appropriate.

d) Upon reaching a concurrence, the panel shall make recommendations in writing to the Director as to the proper resolution of the grievance. All recommendations shall include reasons for such recommendations and shall bear the signatures of the concurring panel members. A dissenting member of the panel may make a recommendation to the Director in writing and shall also sign such recommendation.

e) Upon receipt of recommendations from a panel, the Director shall approve, disapprove or modify the panel recommendations, shall render a decision thereon in writing, shall state the basis therefore, and shall cause a copy of the decision to be served on the parties. The Director's decision shall be final. If the Director disapproves or modifies the panel recommendations, the Director shall include written reasons for such disapproval or modification.

f) The Grievance Form, the Designated Coordinator's response, the statement of reasons for dissatisfaction, the recommendations of the panel and the decision of the Director shall be maintained in accordance with the State Records Act, Ill. Rev. Stat. 1989, ch. 116, par. 43.3 et seq., or as otherwise required by law.

Section 122.60 Accessibility

The Department shall ensure that all stages of the procedure are readily accessible to and usable by individuals with disabilities.

DEPARTMENT OF VETERANS' AFFAIRS

NOTICE OF PROPOSED RULES

Section 122.70 Case-by-Case Resolution

Each grievance involves a unique set of factors which include but are not limited to: the specific nature of the disability; the essential eligibility requirements, the benefits to be derived, and the nature of the service, program or activity at issue; the health and safety of others; and, whether or not an accommodation would constitute a fundamental alteration to the program, service or activity or undue hardship on the Department. Accordingly, termination of a grievance at any level, whether through the granting of relief of otherwise, shall not constitute a precedent on which any other complainants should rely.

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF ADOPTED REPEALER

1) The Heading of the Part: Illinois Clean and Beautiful Program

2) Code Citation: 47 Ill. Adm. Code 140

3) Section Numbers: Adopted Action:
 140.10 Repeal
 140.20 Repeal
 140.30 Repeal
 140.40 Repeal
 140.50 Repeal
 140.60 Repeal

4) Statutory Authority: Implementing P.A. 86-1282, effective July 1, 1991 and authorized by Section 46.20 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, pars. 46.20).

5) Effective Date of Repealer: January 28, 1992

6) Does this rulemaking contain an automatic repeal date? No.

7) Does this repealer contain incorporations by reference? No.

8) Date Filed in Agency's Principal Office: January 22, 1992.

9) Notice of Proposal Published in Illinois Register: September 13, 1991 - 15 Ill. Reg. 13241.

10) Has JCER issued a Statement of Objections to this repealer? No.

11) Differences between proposal and final version: None.

12) Have all the changes agreed upon by the agency and JCER been made as indicated in the agreement letter issued by JCER? No changes were requested by JCER.

13) Will this repealer replace an emergency repealer currently in effect? No.

14) Are there any amendments pending on this Part? No.

15) Summary and Purpose of Amendments: On July 1, 1991 P.A. 86-1282 took effect. This P.A. transferred authority for operating the Illinois Clean and Beautiful Program from the Department of Commerce and Community Affairs to the Lieutenant Governor. It is therefore necessary for this Department to repeal its rules for the program.

16) Information and questions regarding this adopted repealer shall be directed to:

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF ADOPTED REPEALER

Mr. Norm Sims, Deputy Director
Bureau of Policy Development, Planning and Research
Department of Commerce and Community Affairs
620 East Adams Street, 3rd floor
Springfield, Illinois 62701
(217) 785-6097

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF ADOPTED AMENDMENT(S)

- 1) Heading of the Part: Administrative Hearings And Appeals
- 2) Code Citation: 56 Ill. Adm. Code 2725
- 3) Section Number: Adopted Action:
2725.105 Amended Section
2725.115 Amended Section
- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 48, pars.
451, 452, 453, 456, 571, 571.1, 572, 572.1, 578, 579, 580,
610, 611, 680, 681, 683, 700, 702, 703, 704 and 705.
- 5) Effective Date of the Amendment: January 27, 1992.
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this Rule contain an incorporation by reference? No.
- 8) Date filed in Agency's Principal Office: January 27, 1992.
- 9) Notice of Proposal published in Illinois Register:
September 27, 1991 at 15 Ill. Reg. 14014.
- 10) Has JCAR issued a Statement of Objection to these Rules? No.
- 11) Difference between proposal and final version: No changes
have been made.
- 12) Have all the changes agreed upon by the Agency and JCAR been
made as indicated in the agreement letter issued by JCAR?
Yes.
- 13) Will this replace an emergency rule currently in effect? No.
- 14) Are there any amendments pending on this Part? No.
- 15) Summary and purpose of the rules: In an attempt to add
flexibility to the forms design process, these amendments to
Part 2725 remove references to internal form numbers. The
names of the forms remain the same.

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF ADOPTED AMENDMENT(S)

- 16) Information and Questions regarding these Adopted Amendments may be addressed to:

Gregory J. Ramel, Acting Commissioner
Illinois Department of Employment Security
401 South State Street - 2 South
Chicago, Illinois 60605
312/793-4240

The full Text of the Adopted Amendments begins on the next page:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS

PART 2725

ADMINISTRATIVE HEARINGS AND APPEALS

SUBPART A: GENERAL PROVISIONS

Section

2725.1	Definitions
2725.3	Burden Of Proof
2725.5	Designation Of Agents
2725.10	Computation Of Time
2725.15	Disqualification Of Agency Employee
2725.20	Request For Clarification
2725.25	Form Of Papers Filed

SUBPART B: FILING OF APPLICATIONS AND CLAIMS FOR RELIEF

2725.100	Application For Revision Of Statement Of Benefit Wages Or Of Statement Of Benefit Charges
2725.105	Application For Review Of Rate Determination
2725.110	Protest Of Determination And Assessment
2725.115	Claim For Adjustments (Credits) And Refunds
2725.120	Application For Cancellation Of Benefit Wages Or Benefit Charges Due To Lack Of Notice

SUBPART C: APPEAL TO DIRECTOR'S REPRESENTATIVE

2725.200	Filing Of Appeal
2725.205	Pre-Hearing Conference
2725.210	Notice Of Hearing
2725.215	Preparation For The Hearing
2725.220	Telephone Hearings
2725.225	Ex Parte (One Party Only) Communications
2725.230	Subpoenas
2725.232	Depositions
2725.235	Consolidation Or Severance Of Proceedings
2725.237	Adding Necessary Parties
2725.240	Withdrawal Of Petition For Hearing
2725.245	Continuances
2725.250	Conduct Of Hearing
2725.255	Rules Of Evidence
2725.260	Oral Argument-Memoranda-Post Hearing Documents
2725.265	The Record
2725.270	Recommended Decision

DEPARTMENT OF EMPLOYMENT SECURITY

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2725.275 Objections To Recommended Decision
2725.280 Decision Of Director

AUTHORITY: Implementing and authorized by Sections 701, 702, 703, 706, 1501, 1501.1, 1502, 1502.1, 1508, 1509, 1510, 1700, 1701, 2200, 2201, 2203, 2300, 2301, 2302, 2304 and 2305 of the Unemployment Insurance Act (Ill. Rev. Stat. 1989, ch. 48, pars. 451, 452, 453, 456, 571, 571.1, 572, 572.1, 578, 579, 580, 610, 611, 680, 681, 683, 700, 702, 703, 704 and 705.

SOURCE: Adopted at 11 Ill. Reg. 11065, effective July 1, 1987; amended at 12 Ill. Reg. 14653, effective September 6, 1988; amended at 12 Ill. Reg. 16060, effective September 23, 1988; emergency amendments at 13 Ill. Reg. 11872, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 17383, effective October 30, 1989; amended at 14 Ill. Reg. 5126, effective March 22, 1990; amended at 16 Ill. Reg. 113, effective December 23, 1991; amended at 16 Ill. Reg. 2122, effective January 27, 1992

SUBPART B: FILING OF APPLICATIONS AND CLAIMS FOR RELIEF

Section 2725.105 Application For Review Of Rate Determination

a) An Application for Review of Rate Determination must be filed at the address on the Notice of Contribution Rate Determination (form-ER-5) within 15 days of the mailing of the Notice of Contribution Rate Determination to the employer.

b) A sufficient Application shall set forth the following:

1) If the rate determination is based in whole or in part on erroneous benefit wages or erroneous benefit charges, the Application must allege:

- A) The employer was not served with a Statement of Benefit Wages or a Statement of Benefit Charges containing the benefit wages or benefit charges used in the calculation of the employer's contribution rate; or,
- B) The employer has received an order or decision allowing an adjustment of the benefit wages or an adjustment of the benefit charges used in calculating the employer's contribution rate. A copy of such order or decision must be attached to the application.

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- 2) If a determination or decision allowing the payment of benefits has finally been reversed or modified and the benefit wages or benefit charges resulting from such benefit payment were not revised in accordance with the provisions of Section 706 of the Act, the employer shall provide a copy of such final reconsidered finding, reconsidered determination or decision.
- 3) If the employer has not been credited with payment of the full amount of contributions paid to the Director in accordance with Section 1503 of the Act, the employer shall state the exact amount of contributions and the date such contributions were paid, the calendar quarter to which the payment relates, and/or the exact amount of wages for insured work for which contributions were paid to the Director.
- 4) If the employer alleges that its payment of contributions, interest or penalties was not applied in accordance with 56 Ill. Adm. Code 2765.45, it must provide evidence of its request for specific application of the payment.

Example: An employer tendered a payment of \$100.00 which the Agency applied to the earliest unpaid quarter of the employer. If the employer alleges that this payment should have been applied to a different quarter, it shall provide evidence that, at the time the payment was tendered, it indicated the time period to which the payment was to apply.
- 5) If the Agency has made a mathematical error, the employer shall provide a detailed, clear statement showing the correct calculations.
- 6) If the employer alleges that the provisions of Section 1507 of the Act have been erroneously applied, the employer must show that it complied with 56 Ill. Adm. Code 2760.105(b), if applicable, and shall provide a statement of whether the employer has succeeded to substantially all or to a distinct severable portion of the employing enterprises of a predecessor, or whether a successor has succeeded to substantially all or a distinct severable portion of the employer's

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employing enterprises, and the factual basis for such statements.

- 7) If the employer alleges an incorrect Standard Industrial Classification code, a statement of the employer's primary activity and the factual basis for such statement.
- 8) If the employer alleges that it has not been credited with the full amount of wages for insured work subject to the payment of contributions that it reported, it shall state the exact amount of such wages and the quarters for which such wages were reported and shall provide a copy of its "Employer's Contribution and Wage Report" Form-407 (see 56 Ill. Adm. Code 2760.25) and any form-408's, Social Security Number Correction and Name Change Notice, used to report additional wages for the same quarters (see 56 Ill. Adm. Code 2760.145).

c) An Application which does not specify the factual basis for relief sought, or does not contain the information required by the applicable Section of this Part, shall be ruled insufficient. The ruling shall be final and conclusive unless the employer files, within 10 days of the date of mailing of such ruling, a written objection or revised Application, specifically responding to the reasons the original Application was ruled insufficient. The written objection or revised Application shall be reviewed and an order allowing or denying relief issued.

d) If the Application is sufficient, the Agency shall investigate the allegations in the Application based on agency records and any documents supplied by the employer. The Agency shall issue a written order with reasons denying the Application or allowing the Application in whole or in part.

e) An employer disagreeing with the order may appeal to a Director's Representative under Subpart C of this Part.

f) If the basis for review of the rate determination is a pending benefit wage or benefit charge matter, such matter is not a basis for relief under this Section, but rather the employer's remedy is pursuant to Section 1508 of the Act and Section 2725.100 of this Part. If the

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benefit wages or benefit charges are modified or cancelled, as appropriate, through the operation of Section 2725.100 of this Part, appropriate relief will be granted through the operation of Sections 1508 and 1509 of the Act.

Example: While review of a benefit wage or a benefit charge matter is pending, the employer receives a Notice of Contribution Rate Determination based on the contested benefit wages or benefit charges. This employer's pending Application for Revision of Statement of Benefit Wages or Statement of Benefit Charges shall be deemed to be an Application for Review of that portion of its rate based on the contested Statement. If such employer prevails on the Application for Review of Benefit Wages or Statement of Benefit Charges, its benefit wage or benefit ratio shall be modified accordingly and, if this results in a change to its rate, a revised Notice of Contribution Rate Determination will be issued.

(Source: Amended at 16 Ill. Reg. 2122, effective January 27, 1992
Section 2725.115 Claim For Adjustments (Credits) And Refunds

a) Claims for Adjustments (Credits) or Refunds must be made on the agency form, "Employer's Claim for Adjustment/Refund," and filed at the address listed on the form. Such a claim must be filed within three (3) years after the date on which the employing unit paid the contributions, interest or penalties which are the basis of the employing unit's claim.

b) A sufficient Claim for Adjustment (Credit) or Refund must meet the requirements set forth in 56 Ill. Adm. Code 2760.150 and shall set forth the reason for the refund:

- 1) The employer overpaid due to a mathematical error. For example, the employer misplaced a decimal point in computing his contributions due;
- 2) The employer paid at an incorrect rate. For example, the assigned rate was 2.0% and the employer paid at 3.7%. This frequently occurs

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the first year an employer received a rate based on its experience;

- 3) The employer reported wages paid to workers to Illinois that should have been reported to a different state. In such a case, the employer must supply the Agency with a list of workers' names and Social Security account numbers on the form HE-28B titled "Employer's Correction Report Of Wages Previously Reported" if he has not already done so on the form HE-40E titled "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)). If any benefits have been paid to these workers by Illinois, the refund amount shall be adjusted downward to reflect any benefits paid due to the employer's error;
- 4) The employer reported payments that are excluded from the definition of "wages" by the Act. For example, a sole proprietor reported compensation paid to his parents. In such cases, the employer must supply the agency with a list of the workers' names and Social Security account numbers on an form-HE-28B "Employer's Correction Report For Wages Previously Reported" if he has not already done so on form-HE-40E an "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)). If any benefits have been paid to these workers, the refund amount shall be adjusted downward to reflect any benefits paid due to the employer's error;
- 5) The employer incorrectly reported total payments as wages subject to the payment of contributions;

EXAMPLE: The employer made an error in computing the excess wages. In such case, the employer must file an form-HE-28B "Employer's Correction Report Of Wages Previously Reported" to correct his error if he has already not done so on anform HE-40E "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)).
- 6) The employer overpaid due to a rate revision;

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EXAMPLE: The employer's rate is revised downward after he has already paid the contributions for the quarter, thus creating a credit balance for which he can request a refund or adjustment.

- 7) The employing unit is not an employer subject to the Act, but has paid contributions;
- 8) Any other circumstances which would show that the employer overpaid his contributions;
- 9) The employing unit has paid interest and/or penalties which were determined not due.
- c) If the Claim for Adjustment (Credit) or Refund is sufficient, the Agency shall investigate the allegation in the claim by examining Agency records and documents supplied by the employer and then issue a written order.
- d) A claim which does not specify the factual basis for the relief sought or does not contain the information required by subsection (b) shall be ruled insufficient. The ruling shall be final and conclusive unless the employer files, within 20 days of the date of mailing of such ruling in accordance with Section 2203 of the Act, a written objection or revised Claim, specifically responding to the reasons the original Claim was ruled insufficient. The written objection or revised Claim shall be reviewed and an order allowing in whole or in part or denying in whole or in part, issued. An employer disagreeing with such order may appeal to a Director's Representative under Subpart C.

(Source: Amended at 16 Ill. Reg. 2122, effective January 27, 1992)

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF ADOPTED AMENDMENT(S)

- 1) Heading of the Part: Payment Of Unemployment Contributions, Interest And Penalties
- 2) Code Citation: 56 Ill. Adm. Code 2765
- 3) Section Number:
2765.45 Adopted Action:
2765.55 Amended Section
2765.60 Amended Section
2765.68 Amended Section

- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 48, pars. 322, 382, 420, 431, 432, 433, 442, 451, 550, 551, 552, 553, 554, 555, 572.1, 573, 577, 578, 579, 610, 611 and 750.
- 5) Effective Date of the Amendment: January 27, 1992, 1992.

- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this Rule contain an incorporation by reference? No.
- 8) Date filed in Agency's Principal Office: January 27, 1992.
- 9) Notice of Proposal published in Illinois Register: September 27, 1991 at 15 Ill. Reg. 14032.

- 10) Has JCAR issued a Statement of Objection to these Rules? No.
- 11) Difference between proposal and final version: No changes have been made.

- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes.

- 13) Will this replace an emergency rule currently in effect? No.
- 14) Are there any amendments pending on this Part? Yes.

Section Numbers	Proposed Action	Ill. Reg. Citation
2765.67	New Section	15 Ill. Reg. 11034 (August 2, 1991)
2765.69	New Section	15 Ill. Reg. 11034 (August 2, 1991)

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- 2765.225 New Section 15 Ill. Reg. 11034 (August 2, 1991)
- 2765.228 New Section n 15 Ill. Reg. 11034 (August 2, 1991)
- 2765.230 New Section 15 Ill. Reg. 11034 (August 2, 1991)
- 2765.325 Amended Section 15 Ill. Reg. 11034 (August 2, 1991)
- 2765.328 New Section 15 Ill. Reg. 11034 (August 2, 1991)

- 15) Summary and purpose of the rules: In an attempt to add flexibility to the forms design process, these amendments to Part 2760 remove references to internal form numbers. The names of the forms remain the same.

- 16) Information and Questions regarding these Adopted Amendments may be addressed to:

Gregory J. Ramel, Acting Commissioner
Illinois Department of Employment Security
401 South State Street - 2 South
Chicago, Illinois 60605
312/793-4240

The full Text of the Adopted Amendments begins on the next page:

DEPARTMENT OF EMPLOYMENT SECURITY

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2765
PAYMENT OF UNEMPLOYMENT CONTRIBUTIONS, INTEREST AND PENALTIES

SUBPART A: GENERAL PROVISIONS

Section
2765.1 Unemployment Contributions Not Deductible From Wages
2765.5 Definitions
2765.10 Payment Of Contributions
2765.15 Liability For The Entire Year
2765.18 Liability Of A Third Party Purchaser Or Transferee For The Due And Unpaid Contributions, Interest And Penalties Of The Seller Or Transferor's Seller or Transferor Contributions Of Employers By Election
2765.20 Payments In Lieu Of Contributions
2765.30 When Payments In Lieu Of Contributions Payable
2765.35 Payments When Reimbursable Employer Becomes Contributory
2765.40 Payments When Contributory Employer Becomes Reimbursable
2765.45 Application Of Payment
2765.50 Accrual Of Interest
2765.55 Imposition Of Penalty
2765.60 Payment Or Filing By Mail
2765.63 When Payment Due And Consequences Of Upward Revision In Employer's Contribution Rate
2765.65 Waiver Of Interest Or Penalty
2765.66 Waiver Of Interest Accruing Because Of Certain Types Of Employees For Periods Prior To January 1, 1988
2765.68 Waiver Of Penalty For Certain Employers For 1987 And Thereafter Wage Reports-(HE-3740)
2765.70 Time For Paying Or Filing Delayed Payment Or Report
2765.75 Application For Waiver
2765.80 Approval Of Application For Waiver
2765.85 Insufficient Or Incomplete Application
2765.90 Disapproval Of Application Conclusive
2765.95 Appeal And Hearing

SUBPART B: EXPERIENCE RATING

2765.200 Effect Of A Successor Employing Unit's Failure To Notify The Director Of Its Succession
2765.210 Prohibition On Withdrawal Of Joint Application For Partial Transfer Of Experience Rating Record
2765.220 Determination Of Benefit Wage And Benefit Ratio

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SUBPART C: BENEFIT CHARGES

2765.325 Application Of "30 Day" Requirement For Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act
2765.326 Requirement For A Separation Or A Reduction In The Work Offered In Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act
2765.332 Effect Of Ineligibility Under Section 602(B) On Chargeability Under Section 1502.1 Of The Act
2765.333 Effect Of Ineligibility Under Section 612 On Chargeability Under Section 1502.1 Of The Act
2765.334 Effect Of Ineligibility Under Section 614 On Chargeability Under Section 1502.1 Of The Act
2765.335 Procedural Requirements And Right Of Appeal

AUTHORITY: Implementing and authorized by Sections 212, 302, 500, 601, 602, 603, 612, 701, 1400, 1401, 1402, 1403, 1404, 1405, 1502.1, 1503, 1507, 1508, 1509, 1700, 1701 and 2600 of the Unemployment Insurance Act (Ill. Rev. Stat. 1989, ch. 48, pars. 322, 382, 420, 431, 432, 433, 442, 451, 550, 551, 552, 553, 554, 555, 572.1, 573, 577, 578, 579, 610, 611 and 750).

SOURCE: Adopted at 6 Ill. Reg. 3863, effective March 31, 1982; amended at 7 Ill. Reg. 13266, effective September 28, 1983; recodified at 8 Ill. Reg. 15027; amended at 11 Ill. Reg. 3972, effective February 23, 1987; amended at 11 Ill. Reg. 11743, effective June 26, 1987; amended at 11 Ill. Reg. 12882, effective July 22, 1987; emergency amendments at 12 Ill. Reg. 225, effective January 1, 1988, for a maximum of 150 days, expired May 30, 1988; amended at 12 Ill. Reg. 11740, effective July 5, 1988; amended at 12 Ill. Reg. 17342, effective October 12, 1988; amended at 12 Ill. Reg. 20484, effective November 28, 1988; emergency amendments at 13 Ill. Reg. 11911, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 17410, effective October 30, 1989; amended at 14 Ill. Reg. 6218, effective April 16, 1990; amended at 14 Ill. Reg. 19886, effective November 29, 1990; amended at 15 Ill. Reg. 185, effective December 28, 1990; amended at 15 Ill. Reg. 11122, effective July 19, 1991; amended at 16 Ill. Reg. 2131, effective January 27, 1992.

SUBPART A: GENERAL PROVISIONS

Section 2765.45 Application Of Payment

- a) Whenever the employer makes a payment, and it is accompanied by a letter, Employer's Contribution Report BE-3 or a Statement of Account, the money received shall be applied to the quarter or quarters indicated by such employer.

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- b) If no designation is made for the application of the remittance, or if the payment received is more than sufficient to cover the quarter to which it applies, the remittance or the excess shall be applied to the penalties, interest and unemployment contributions, in that order, beginning with the oldest or earliest unpaid quarters of the employer, if any.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992

Section 2765.55 Imposition Of Penalty

- a) Beginning with the "Employer's Report-Of-Wages-Paid-to-Each-Worker" (Form UE-40) required for the first calendar quarter of 1982 through the fourth quarter of 1987, the penalty for late filing provided in Section 1402B of the Act shall be a sum equal to the lesser of \$5 for each \$10,000 or fraction thereof of the total wages for insured work paid during the period or \$2,500 for each month or part thereof of such failure to file the report. In no case, however, will the penalty be less than \$100 nor more than the lesser of \$10 for each \$10,000 or fraction thereof of the total wages for insured work paid during the period or \$5,000.

- b) Beginning with the "Employer's Report-Of-Wages-Paid-to-Each-Worker" (Form UE-40) part of a packet known as "Employer's Contribution and Wage Report" (UE-3/40) required for the first calendar quarter of 1988, the penalty for late filing of the "Employer's Contribution and Wage Report" provided in Section 1402B of the Act shall be a sum equal to the lesser of \$5 for each \$10,000 or fraction thereof of the total wages for insured work paid during the period or \$2,500, for each month or part thereof of such failure to file the report. In no case, however, will the penalty be less than \$50 nor more than the lesser of \$10 for each \$10,000 or fraction thereof of the total wages for insured work paid during the period or \$5,000.

- eb) If a timely wage report (UE-40) is deemed insufficient (see Section 2760.120(a)) by the Director, the employer has 30 days after the mailing of the notice of such insufficiency to the employer within which to file a corrected and sufficient wage report without penalty.

- dc) A penalty may be waived for good cause shown as provided in Sections 2765.65 and 2765.68.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992

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Section 2765.60 Payment Or Filing By Mail

Where the payment of taxes/contributions or filing wage reports (UE-40) is received through the United States mail and the postmark thereon bears a date within the prescribed time limits, the taxes/contributions or wage reports shall be considered timely paid or filed, as the case may be.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992

Section 2765.68 Waiver Of Penalty For Certain Employers For 1987 And Thereafter Wage Reports (UE-3/40)

- a) Notwithstanding any other provisions of this Part to the contrary, the Director shall waive the reporting penalty provided in Section 1402 of the Act for any calendar year thereafter, if the employer, within 30 working days of the date of mailing of the notice from the Agency that its report (UE-3/40) is delinquent, shows that:

- 1) The total amount of contributions due for the calendar quarter of such report (UE-3/40) is less than \$500; and
- 2) This delinquent report (UE-3/40) is the employer's first such late report during the last 20 calendar quarters, including such quarters during which the employer was not required to file reports (UE-3/40) under the Act.

- b) The employer's application for this waiver shall be made in the form provided in Section 2765.75, except that it need not be sworn and instead of stating the "good cause applicable," the employer shall state that it met the requirements of subsections (a)(1) and (2). In support of its statement that it met the requirements of subsections (a)(1), the employer shall attach a copy of its Wage-and-Contribution and Wage Report (UE-3/40) for such calendar quarter.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992

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- 1) Heading of the Part: Administration
- 2) Code Citation: 59 Ill. Adm. Code 101
- 3) Section Number: Adopted Action:
101.100 Added
- 4) Statutory Authority: Implementing and authorized by Ill. Rev. Stat. 1989, ch. 91½, par. 100-18.1, added by P.A. 87-13, effective July 24, 1991.
- 5) Effective Date of Amendment: January 24, 1992
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this amendment contain incorporations by reference? Yes. This amendment contains incorporations by reference in accordance with Section 6.02(a) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1006.02(a)).
- 8) Date Filed in Agency's Principal Office: January 17, 1992
- 9) Notice(s) of Proposal Published in Illinois Register: October 11, 1991 (15 Ill. Reg. 14363). This rulemaking was adopted through the emergency rulemaking procedures at 15 Ill. Reg. 14663, effective October 1, 1991.
- 10) Has JCAR issued a Statement of Objections to this amendment? No, JCAR did not object to this rulemaking.
- 11) Difference(s) between proposal and final version:

The Department added back in Appendix A to the table of contents. This was inadvertently omitted from the first notice. In addition, on the recommendations of JCAR, the Department made the following technical changes:

Subsection (a) - In the definition of "Medicaid", commas were added after "Public Aid" in the second line and after "recipients" in the fourth line.

Subsection (b)(3)(B)(i) - The word "after" was substituted for the "of" in the last sentence after the word "days".

- Subsection (b)(7)(F) and (G) - The labeling was corrected to read (b)(7)(E) and (b)(7)(F).
- Subsection (b)(7)(F)(iii)(relabeled) - The word "above" was substituted for the phrase "of this subsection" after (i) in the last sentence.
- Subsection (1)(3)(A) - The end word "for" was deleted and the phrases "for which the provider" was added before the phrase "had not yet been".
- Subsection (1)(3)(C) - The word "proportionally" was substituted for the word "proportional".
- Subsection (m)(2) - The word "of" was added before the phrase "an audit finding" in the fourth line.
- Subsection (m)(5) - A comma was added after the word "hearing" in the second line.
- Subsection (m)(7) - The word "after" was substituted for the word "of" after the word "days" in the first line.
- Subsection (m)(9)(A) - Semicolons were substituted for commas after the words "hearings" in the second line and "case" in the third line.
- Subsection (m)(9)(C) - An "s" was added to the word "credential" in the last sentence.
- Subsection (m)(9)(D) - The word "record" was substituted for the word "tape" in the last sentence.
- Subsection (m)(12)(A) and (B) - The phrase "his or her" was added before the word "designee" wherever it appeared.
- Subsection (m)(12)(B) - The word "after" was substituted for the word "of" after the word "days" in the fourth line.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? JCAR did not issue a letter of agreement. The only changes made on the recommendations of JCAR were technical changes (see 11 above).
- 13) Will this amendment replace an emergency rule? Yes. The rulemaking replaces the emergency rulemaking adopted at 15 Ill. Reg. 14663, effective October 1, 1991.

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14) Are there any amendments pending on this Part? No.

15) Summary and Purpose of Amendment:

P.A. 87-13 requires the Department to access and collect a participation fee from providers that deliver community based services reimbursable by Medicaid. The Department is authorized to designate community Medicaid services subject to the fee.

Services to be accessed during FV 92 are those funded by the Medicaid home and community based services waiver for persons with developmental disabilities.

16) Information and questions regarding this adopted amendment shall be directed to:

Name: Judith Hollenberg
Rules Administrator
Address: 402 Stratton Building
Springfield, IL 62765
Telephone: (217)785-3313

The full text of the Adopted Amendment begins on the next page:

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TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

PART 101
ADMINISTRATION

Section

- 101.10 Illinois Department of Mental Health and Developmental Disabilities
-- Internal Organization (repealed)
101.20 Service recipients activity fund in Department facilities
101.30 Payments to the account of service recipients
101.60 Service contracts (recodified)
101.80 Conflict of interest
101.90 Specialized living centers
101.100 Community mental health and developmental disabilities service
Provider participation fee trust fund

APPENDIX A Organization Charts (repealed)

- Illustration A Illinois Department of Mental Health and Developmental Disabilities (repealed)
Illustration B Associate Director (repealed)
Illustration C Division of Developmental Disabilities (repealed)
Illustration D Division of Alcoholism (repealed)
Illustration E Division of Management Services (repealed)
Illustration F Division of Community Services and Interagency Affairs (repealed)
Illustration G Region 1A Office (repealed)
Illustration H Region 1B Office (repealed)
Illustration I Region 2 Office (repealed)
Illustration J Region 2 Developmental Disabilities (repealed)
Illustration K Region 3A Office (repealed)
Illustration L Region 3B Office (repealed)
Illustration M Region 4 Office (repealed)
Illustration N Region 5 Office (repealed)

AUTHORITY: Implementing Section 2-105 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat., 1989 1990 Supp., ch. 91, par. 2-105). Sections 6, 18.1, 20 and 22 of the Department of Mental Health and Developmental Disabilities Act (Ill. Rev. Stat. 1989, ch. 91, pars. 100-6, 100-18.1, 100-20 and 100-22, as amended by P.A. 86-1324; effective-September 6, 1990). P.A. 87-13, effective July 24, 1991, Section 3.06 of the Specialized Living Centers Act (Ill. Rev. Stat. 1989, ch. 91, par. 603.06) and Section 4A-101 of the Illinois Governmental Ethics Act (Ill. Rev. Stat. 1989, ch. 127, par. 604A-101) and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1989, ch. 91, par. 5-104) and Section 5 of the Department of Mental Health and Developmental Disabilities Act (Ill. Rev. Stat. 1989 1990 Supp., ch. 91, par. 100-5.7 as amended by P.A. 86-1324; effective-September-6, 1990).

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SOURCE: Effective February 1, 1977, corrected April 1, 1977; amended at 3 Ill. Reg. 50, p.277, effective December 3, 1979; amended at 4 Ill. Reg. 17, p. 205, effective April 15, 1980; codified at 5 Ill. Reg. 10716; amended at 8 Ill. Reg. 12265, effective July 1, 1984. Section 101.60 recodified to 44 Ill. Adm. Code 1250 at 8 Ill. Reg. 18490; amended at 15 Ill. Reg. 9316, effective June 18, 1991; emergency amendment at 15 Ill. Reg. 14663, effective October 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 2137, effective January 24, 1992.

NOTE: Bold-face type denotes statutory language.

Section 101.100 Community mental health and developmental disabilities service provider participation fee trust fund

a) Definitions

For the purposes of this Section, the following terms are defined:

"Actual payments." The absolute amount of Medicaid payments received by a provider from the Department, per written agreement, for the delivery of Medicaid-reimbursable services during the fee year.

"Applicable provider" or "provider." A community agency from which the Department purchases services through payments which are matched by federal funds under Medicaid and which the Department has determined to be subject to the provider participation fee.

"Days." Calendar days, unless otherwise specified.

"Department." The Department of Mental Health and Developmental Disabilities.

"Fee." A fee that each applicable provider shall submit to the community mental health and developmental disabilities services provider participation fee trust fund.

"Fee year." The fiscal year beginning July 1 and ending June 30 for which the fee amount applies.

"Fund." The community mental health and developmental disabilities services provider participation fee trust fund comprising the fees submitted by applicable providers, the interest accrued on the fees, and the related federal Medicaid matching funds.

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"Medicaid." Medical assistance issued by the Illinois Department of Public Aid, under the provisions of Title XIX of the Social Security Act (42 U.S.C.A. 1396 et seq., 1983), for eligible recipients, including Aid to the Aged, Blind and Disabled (AABD), Aid to Families with Dependent Children (AFDC), Medical Assistance No Grant (MANG), Refugee Repatriate Program (RRP) recipients as well as Title XIX eligible Department of Children and Family Services (DCFS) wards.

"Medicaid payments." Payments made by the Department for services covered under Medicaid for which the State receives federal matching funds.

"Medicaid reimbursed services." A service provided by a provider under an agreement with the Department for which the State receives reimbursement from the Medicaid program and which is subject to the fee process.

"Projected payments." The estimated amount of Medicaid payments to be received by a provider from the Department, per written agreement, for the delivery of Medicaid-reimbursable services during the fee year.

b) Fees

1) Calculation of projected fees

Each year the Department shall calculate a fee which shall be paid by applicable providers. The fee amounts due to the fund by applicable providers shall be based on the projected amount of Medicaid payments to be made by the Department to the provider for the year taking into consideration:

- A) The unit rates for services;
- B) The units of service billed by the assessed provider for the year prior to the fee year; and
- C) Any other factors which will influence a change in the number of units of service to be billed during the fee year.

2) Differential fee collection schedule

- A) The Department shall establish a differential fee collection schedule for any provider whose projected Medicaid payments during the current fee year exceeds

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the actual Medicaid payments for the year prior to the fee year by more than 20 percent.

B) The Department shall establish a differential fee collection schedule for such providers which reflects the increasing payments for the current fee year.

C) The differential fee collection schedules for these providers will require lesser fee submittals during the first quarter with gradually increasing fee submittals according to the providers' projected growth in Medicaid receipts.

3) Adjustment of inaccurate projections

A) If the Department determines that any fee amount assessed a provider was incorrect, the Department will correct the fee error.

i) The Department will issue a revised fee amount for the quarter.

ii) The Department will adjust the fee amounts due for subsequent quarters of the fee year.

B) The Department shall monitor quarterly the ratio of actual to projected total gross payments for those assessed providers whose estimated increase in gross total payment for the fee year is expected to exceed 20 percent.

i) When the accumulated actual fees due to the fund by the assessed provider differ by more than 10 percent from the accumulated projected fees, the Department shall issue a revised fee amount for the immediate calendar quarter and a revised collection schedule for the remainder of the fee year. When this occurs, the provider shall submit the revised fee amount within 30 days after the date of postmark on the Department's written notification of the change.

ii) When the accumulated actual fees due to the fund by an assessed provider are less than the accumulated projected fee amounts, the Department shall return to the provider the appropriate share of overpaid fees.

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4) Calculation of provider participation fees

The Department shall multiply the projected Medicaid payments for services which it has determined to be subject to the provider participation fee for the fee year of individual providers by an amount not greater than 15 percent to determine the fee amount owed to the fund.

5) Notification of fee due date

The Department shall notify each assessed provider, in writing, of the amount of the fee 30 days prior to the required fee due date. The Department may modify the notification timeframes and extend the required fee due date for good cause shown.

6) Provider submission of fees

A) Each provider shall submit the specified fee in equal quarterly amounts on or before the first business day of each calendar quarter.

B) Due dates for provider submission of quarterly fee payments shall be January 2, April 1, July 1, and October 1, or, if these dates are on weekends or holidays, the first business day immediately following.

7) Delayed fee collection schedules

A) The Director of the Department is authorized to establish delayed fee collection schedules for providers that are unable to make timely payments due to financial difficulties.

B) Delayed fee collection schedules shall be granted only under extraordinary circumstances to qualified providers that meet all of the requirements in subsections (C) and (D) below.

C) Denial of an application to borrow provider participation fee funds from a financial institution or other lending entity.

D) A signed written agreement with the Department specifying the terms and conditions of the delayed fee collection schedule, which shall contain the following provisions:

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- i) Specific reason(s) for the establishment of the delayed fee collection schedule;
- ii) Specific dates on which submission of the fees will be received by the Department and the amount of the fees which will be received on each specified date described;
- iii) The interest that shall be due from the provider as a result of the establishment of the delayed fee collection schedule;
- iv) A certification stating that, should the provider entity be sold, the new owners shall be made aware of the liability and shall assume responsibility for repaying the debt to the Department in accordance with the original agreement;
- v) A certification stating that all information forwarded to the Department in support of the establishment of the delayed fee collection schedule request is true and accurate to the best of the signatory's knowledge; and
- vi) Such other terms and conditions that may be required by the Department.
- E) In order to receive consideration for delayed fee collection schedules, providers shall forward their requests in writing (telex requests are acceptable) to the Department. Requests must be received within five working days of the date of the Department's notification of the provider participation fee due for the subject quarter. All telex requests must be followed-up with original written requests. All requests shall include:
- i) An explanation of the circumstances creating the need for the delayed fee collection schedule;
- ii) Supportive documentation to substantiate the emergency nature of the request and risk of irreparable harm to the provider's clients;
- iii) Specification of the arrangements being requested by the provider.

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- F) The Department shall notify the provider, in writing, of its decision with regard to the request for the establishment of a delayed fee collection schedule. An agreement shall be issued to the provider for all approved requests. The agreement shall be signed by the provider's administrator, owner, chief executive officer, or other authorized representative and must be received by the Department before the first scheduled fee submittal date listed in the delayed fee collection schedule.
- i) The Department shall waive the penalties for delinquent and/or deficient fee submittal upon the approval of the provider's request for establishment of a delayed fee collection schedule. When a provider's request for establishment of a delayed fee collection schedule is approved and the Department receives the signed agreement in accordance with this subsection, such penalties shall be permanently waived for the subject quarter unless the provider reneges on the conditions of the agreement. When the provider reneges on the conditions of the agreement, the agreement shall be considered null and void and such penalties shall be fully reinstated.
- ii) The delayed fee collection schedule shall include interest at a rate not to exceed the State's borrowing rate. The applicable interest rate shall be identified in the agreement described in subsection (E) above.
- iii) When a provider has requested and received Department approval for a delayed fee collection schedule, the provider shall not receive approval for subsequent delayed fee collection schedules until such time as the terms and conditions of any current delayed fee collection agreement has been satisfied. The waiver of penalties described in (i) above shall not apply to a provider that has not satisfied the terms and conditions of any current delayed fee collection agreement.
- 8) Penalty for delinquent or deficient fees

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Any provider that fails to submit the fee when due, or submits less than the full amount due, shall be assessed a penalty of 10 percent of the delinquency or deficiency for each month, or fraction thereof, computed on the full amount of the delinquency or deficiency, which includes any penalty accrued and not paid, from the time the fee was due.

9) Notification to comptroller

A) The Director may take action to notify the Office of the Comptroller to collect any amount of monies owed by the provider to the fund.

B) The Director may take action against providers failing to submit any delinquent or deficient fee or penalty including:

i) Suspension of payments:

ii) Cancellation of the provider contract or agreement; and

iii) Refusal to issue, extend, or reinstate the provider contract or agreement.

c) Local government funds certification

Providers may use local government funds as a source to meet their obligated, quarterly assessed fee amount in part or in whole.

1) If local government funds are used, the provider shall certify the planned spending of these local funds for the specified services in lieu of actual cash payment to the fund by providing a statement from each local government funder stating the intent of that funder to contribute the applicable portion of the fee amount, signed by the chairperson of the local government funder taxing authority.

2) If the certification process is used, the provider shall submit to the Department, by October 31 of the year following the fee year, an annual audit statement from a certified public accounting firm which demonstrates that the local government funds were spent for the intended service and in the amounts required according to the fee amount.

3) If the local government funds were not spent for the Medicaid service as required:

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A) The provider shall submit to the State by October 31 of the year following the fee year the amount of the fee which was not spent;

B) A fine equal to 25 percent of the amount of the fee not properly covered by the local government funds certification process.

C) This payment shall be submitted to the State Treasury by October 31 of the year following the fee year.

d) Deposit of revenue

Deposits to the fund shall consist of:

1) Federal revenues received under Title XIX of the Social Security Act as a result of the increased rates paid by the Department to providers of Medicaid-reimbursable services;

2) The fees paid by providers of Medicaid-reimbursable services under agreement with the Department which are eligible for reimbursement from Medicaid and which are subject to the fee process;

3) The interest earned on the deposits to the fund; and

4) The revenues generated from fines and penalties levied by the Department on providers in accordance with subsection (c)(3).

e) Protection from reduction

1) The moneys in the fund shall be exempt from any State budget reduction Acts.

2) The funds shall not be used to replace any funds otherwise appropriated to the Medicaid program by the Illinois General Assembly.

f) Administration of contingency reserves

1) Moneys paid from the fund shall be used first to:

A) Pay for the administrative expenses incurred by the Department in performing the duties authorized by Section 100-18.1 of the Department of Mental Health and Developmental Disabilities Act (Ill. Rev. Stat. 1989, ch. 91, par. 100-18.1, added by P.A. 87-13, effective July 24, 1991);

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B) Pay any amounts reimbursable to the federal government, which are required to be paid by State warrant.

2) Disbursements from the fund shall be by warrants drawn by the State Comptroller upon receipt of vouchers duly executed and certified by the Department.

3) The Department shall establish a contingency reserve not to exceed three percent in any fee year of the total amount of the revenues described in subsection (d).

g) Fund expenditures

The Department shall spend 100 percent of the moneys in the fund during the fee year from which the monies were collected to reimburse providers for the delivery of Medicaid services less:

1) The administrative expenses incurred in performing the duties authorized by Section 100-18.1 of the Department of Mental Health and Developmental Disabilities Act; and

2) A maximum of three percent of the total deposits made to the fund in any fee year for the contingency reserve.

h) Provider assurance

1) In the aggregate, providers under contract with the Department to provide Medicaid reimbursable services that are subject to the fee payment process are entitled to a return of 100 percent of the fee amount paid during any fee year:

A) Plus the federal funding portion;

B) Less the administration expenses incurred by the Department in performing the activities authorized; and

C) Less the allowed three percent contingency reserve.

2) No provider shall receive back less than the amount required as a fee for any given fee year.

i) Department records

The Department shall maintain records showing the amount of money paid by each provider into the fund and the amount of money that has been paid from the fund to each provider for each fee year.

j) Annual auditDEPARTMENT OF MENTAL HEALTH AND
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1) The Department shall conduct an annual audit of the fund to determine that:

A) Receipts were appropriate and accurate;

B) Disbursements were appropriate and accurate;

C) Delayed fee collection schedules were justified and approved;

D) Interest and penalties were properly calculated and imposed;

E) Local government funds were properly certified;

F) Contingency reserves were accurately calculated;

G) Records were appropriate, complete and correct.

2) Any errors or deficiencies identified as a result of such audit shall be corrected on a timely basis.

k) Fee correction and recovery

If the Department's annual audit identifies erroneous fee or reimbursable payment amounts, then it shall:

1) Correct the fee payment amount and any related fine and notify the provider;

2) Correct the reimbursable payment amount to the provider; or

3) Take the action necessary to recover the required fee or reimbursed payment amount from the provider.

l) Applicability of provider participation fees

1) The Department shall determine which services and which providers will be subject to the provider participation fees.

2) The Department may choose to terminate or revise its policies concerning the computation and/or collection of provider participation fees if laws or regulations are implemented affecting state financing of Medicaid services with mandatory provider participation fees.

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3) If the Department terminates the collection of provider participation fees and a positive balance remains in the fund, the Department shall expend the balance as follows:

- A) Refund to each provider any portion of the annual fees the provider had submitted, but for which the provider had not yet been reimbursed.
- B) Expend whatever is required for any outstanding costs related to the administration of the provider participation fee initiative or to its termination.
- C) Distribute any remaining balance among contributing providers proportionally to each provider's contributions to the fund during the 12-month period prior to termination.

m) Appeals procedure

1) Appealable decisions - A provider may request a hearing on the following issues:

- A) The initial assessment or change in the amount of the required payment;
- B) An audit finding that a provider is required to reimburse the Department for a fee or payment.

2) Notice of appeal rights - The Department shall inform the provider of the right to appeal and the appeal procedure whenever the provider is notified of the initial assessment or change in the amount of the required payment; or of an audit finding that a provider is required to reimburse the Department for a fee or payment.

3) Request for hearing - A provider may appeal the Department's decision by requesting a hearing in writing within 10 days after receipt of the decision. The request shall be sent to:

Hearings and Appeals Section
Department of Mental Health and
Developmental Disabilities
401 South Spring Street
Springfield, IL 62765

4) Stay of proceedings - The request for an appeal shall stay any proceedings or decision taken concerning the provider until the resolution of the appeal.

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5) Upon request of the provider at any time prior to the scheduled hearing, the provider may request an informal conference with the Division of Administrative Services to determine the facts and issues and to resolve any conflicts as amicably as possible.

6) Hearing officer - The hearing shall be conducted by a hearing officer appointed by the Director.

7) Scheduling and notice of hearings - Within 60 days after the receipt of the appeal, the hearing officer shall schedule a hearing, to be held in the Department's central offices or a place agreed to by the hearing officer, the Department staff involved and the provider. The hearing officer shall send written notice of the hearing to the provider via certified mail. The notice shall contain:

- A) A statement of the nature of the hearing;
- B) A statement of the time and place of the hearing;
- C) A statement of the right to be represented by an attorney at the provider's expense.

8) Continuances - The hearing officer may, upon good cause shown, grant a continuance requested by the provider.

9) Conduct of hearings

A) The hearing officer shall regulate the course of the hearings; hold informal conferences for the purpose of resolving the case; dispose of procedural issues; continue the hearing from time to time when necessary; examine witnesses and rule upon the relevancy of evidence.

B) At the hearing, the provider and the Department may present written and oral evidence. The Department shall have the burden of proving by substantial evidence that the decision was made in accordance with the statutes and this Section. Upon conclusion of the Department's presentation, the provider may present written and oral evidence.

C) The common law rules of evidence shall not be enforced in the hearing. The hearing officer shall conduct the hearing in a manner that allows participants to present

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their evidence fully and freely. Either party may ask questions of each other or any witness, and the hearing officer may ask questions of either party or any witness. Questions impeaching the witness' character or credentials shall be improper.

- D) The hearing shall be taped or stenographically recorded. The tape or a copy of the transcript shall be retained by the Department. If the provider appeals the hearing officer's decision, a copy of the record shall be provided to the provider upon request.

- 10) Standard of review - In all appeals, the hearing officer shall decide whether there was substantial evidence showing that the Department's decision was made in accordance with statute and this Section.

- 11) Decision - Within 10 working days after the hearing, the hearing officer shall issue a written decision that upholds, modifies or reverses the Department's decision. The decision shall contain the reasons for the hearing officer's action. The hearing officer shall mail copies to the provider and the Department via certified mail. The decision shall be accompanied by a letter that informs the provider of the right to appeal the decision and state the procedure for requesting an appeal.

- 12) Appeal of the hearing officer's decision

- A) The provider may request a review of the hearing officer's decision by the Director or his or her designee no more than 20 days after the receipt of the hearing officer's decision.

- B) Upon receipt of the request for review, the Director or designee shall review the hearing officer's decision and copies of all documents considered at the hearing. Within 20 working days after receipt of the request for review, the Director or his or her designee shall issue a decision upholding, modifying or reversing the hearing officer's decision. The Director or his or her designee shall uphold the decision if he or she determines that the decision was supported by substantial evidence. Copies of the decision shall be sent to the provider, the Department and the hearing officer.

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- C) The Director's decision shall constitute a final administrative decision in accordance with the Administrative Review Law (Ill. Rev. Stat. 1989, ch. 110, par. 3-101 et seq.).

(Source: Added at 16 Ill. Reg. 2137, effective January 24, 1992)

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- 1) The Heading of the Part: Identification and Listing of Hazardous Waste
- 2) The Code Citation: 35 Ill. Adm. Code 721
- 3) Section Number: Adopted Action:
721. Appendix I Amendment
Table A Amendment
Table B Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1991, ch. 111½, par. 1022.4 and 1027.
- 5) Effective Date of Rules (Amendments, Repealer): January 27, 1992
- 6) Does this rulemaking contain an automatic repeal date?
No.
If so, please specify date:
- 7) Does this rule (amendment, repealer) contain incorporation by reference? Yes.
If "yes," was a copy of the approval form issued by JCAR attached to this rulemaking? No approval from JCAR was necessary as all the incorporations are pursuant to Section 6.02(a) of the Illinois Administrative Procedure Act.
- 8) Date Filed in Agency's Principal Office: December 19, 1991
- 9) Notice(s) of Proposal Published in Illinois Register: 15 Ill. Reg. 9288, June 28, 1991.
- 10) Has JCAR issued a Statement of Objections to this (these) amendment(s)? If answer is "yes," please complete the following:

No. This rulemaking is an "identical in substance" rulemaking as defined in Section 7.2 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 ½, par. 1007.2). Section 22.4(a) of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1022.4(a)) provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

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- A) Statement of Objection: _____, _____ Ill. Reg. _____
 - B) Agency Response: _____, _____ Ill. Reg. _____
 - C) Date Agency Response Submitted for Approval to JCAR: _____
 - 11) Difference(s) between proposal and final version: The final version has the addition of three new conditions (4, 5, and 6) at the end of the amendment to Table B of Appendix I. Condition 4 is almost identical to condition 3 except for the substitution of the Illinois Environmental Protection Agency's name and address in place of the United States Environmental Protection Agency name and address. Condition 5 governs enforcement of this new amendment under the Illinois Environmental Protection Act. Condition 6 requires notification to the Illinois Pollution Control Board of any United States Environmental Protection Agency action affecting this new amendment.
 - 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR?
Yes.
 - 13) Will this rule (amendments, repealer) replace an emergency rule currently in effect? No.
 - 14) Are there any amendments pending on this Part? Yes.
- | <u>Section Numbers:</u> | <u>Proposed Action:</u> | <u>Ill. Reg. Citation:</u> |
|-------------------------|-------------------------|--------------------------------------|
| 721.102 | amendment | 16 Ill. Reg. 820, January 17, 1992 |
| 721.103 | amendment | 16 Ill. Reg. 820, January 17, 1992 |
| 721.104 | amendment | 16 Ill. Reg. 820, January 17, 1992 |
| 721.106 | amendment | 16 Ill. Reg. 820, January 17, 1992 |
| 721.111 | amendment | 15 Ill. Reg. 2075, February 15, 1991 |

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- 721.120 amendment 16 Ill. Reg. 820,
January 17, 1992
- 721.131 amendment 15 Ill. Reg. 15910,
November 8, 1991
- 721.131 amendment 16 Ill. Reg. 820,
January 17, 1992
- 721.132 amendment 16 Ill. Reg. 820,
January 17, 1992
- 15) **Summary and Purpose of Amendments:** This rulemaking, Board docket R91-12, updates the Board's RCRA hazardous waste rules to correspond with amendments adopted by USEPA which appeared in the Federal Register on April 29, 1991. The proposed amendment to 721.131 Appendix I involves an addition to the Table B list of wastes excluded from specific sources to include chemically stabilized electric arc furnace dust/sludge from USX Steel Corporation, USS Division, Chicago, Illinois (Southworks Plant, Gary Works).

This rulemaking is an "identical in substance" rulemaking as defined in Section 7.2 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 ½, par. 1007.2). Section 22.4(a) of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1022.4(a)) provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Elizabeth Handzel
100 W. Randolph Street
State of Illinois Center
Suite 11-500
Chicago, IL 60601
(312) 814-3473

The full text of the adopted amendments begins on the following page:

POLLUTION CONTROL BOARD

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 721

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBPART A: GENERAL PROVISIONS

Section
721.101 Purpose of Scope
721.102 Definition of Solid Waste
721.103 Definition of Hazardous Waste
721.104 Exclusions
721.105 Special Requirements for Hazardous Waste Generated by Small Quantity Generators
721.106 Requirements for Recyclable Materials
721.107 Residues of Hazardous Waste in Empty Containers
721.108 PCB Wastes Regulated under TSCA

SUBPART B: CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE AND FOR LISTING HAZARDOUS WASTES

Section
721.110 Criteria for Identifying the Characteristics of Hazardous Waste
721.111 Criteria for Listing Hazardous Waste

SUBPART C: CHARACTERISTICS OF HAZARDOUS WASTE

Section
721.120 General
721.121 Characteristic of Ignitability
721.122 Characteristic of Corrosivity
721.123 Characteristic of Reactivity
721.124 Toxicity Characteristic

SUBPART D: LISTS OF HAZARDOUS WASTE

Section
721.130 General
721.131 Hazardous Wastes From Nonspecific Sources
721.132 Hazardous Waste from Specific Sources
721.133 Discarded Commercial Chemical Products, Off-Specification Species, Container Residues and Spill Residues Thereof

Appendix A Representative Sampling Methods

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Appendix B	Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)
Appendix C Table A	Chemical Analysis Test Methods
Table B	Analytical Characteristics of Organic Chemicals (Repealed)
Table C	Analytical Characteristics of Inorganic Species (Repealed)
Appendix G	Sample Preparation/Sample Introduction Techniques (Repealed)
Appendix H	Basis for Listing Hazardous Wastes
Appendix I	Hazardous Constituents
Table A	Wastes Excluded under Section 720.120 and 720.122
Table B	Wastes Excluded from Non-Specific Sources
Table C	Wastes Excluded from Specific Sources
Appendix J	Wastes Excluded From Commercial Chemical Products, Off-Specification Species, Container Residues, and Soil Residues Thereof
Appendix Z	Method of Analysis for Chlorinated Dibenzop-p-Dioxins and Dibenzofurans Table to Section 721.102

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R81-22, 43 PCB 427, at 5 Ill. Reg. 9781, effective as noted in 35 Ill. Adm. Code 700.106; amended and codified in R81-22, 45 PCB 317, at 6 Ill. Reg. 4828, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-18, 51 PCB 31, at 7 Ill. Reg. 2518, effective February 22, 1983; amended in R82-19, 53 PCB 131, at 7 Ill. Reg. 13999, effective October 12, 1983; amended in R84-34, 61 PCB 247, at 8 Ill. Reg. 24562, effective December 11, 1984; amended in R84-9, at 9 Ill. Reg. 11834, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 998, effective January 2, 1986; amended in R85-2 at 10 Ill. Reg. 8112, effective May 2, 1986; amended in R86-1 at 10 Ill. Reg. 14002, effective August 12, 1986; amended in R86-19 at 10 Ill. Reg. 20647, effective December 2, 1986; amended in R86-28 at 11 Ill. Reg. 6035, effective March 24, 1987; amended in R86-46 at 11 Ill. Reg. 13466, effective August 4, 1987; amended in R87-32 at 11 Ill. Reg. 16698, effective September 30, 1987; amended in R87-5 at 11 Ill. Reg. 19303, effective November 12, 1987; amended in R87-26 at 12 Ill. Reg. 2456, effective January 15, 1988; amended in R87-30 at 12 Ill. Reg. 12070, effective July 12, 1988; amended in R87-39 at 12 Ill. Reg. 13006, effective July 29, 1988;

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amended in R88-16 at 13 Ill. Reg. 382, effective December 27, 1988; amended in R89-1 at 13 Ill. Reg. 18300, effective November 13, 1989; amended in R90-2 at 14 Ill. Reg. 14401, effective August 22, 1990; amended in R90-10 at 14 Ill. Reg. 16472, effective September 25, 1990; amended in R90-17 at 15 Ill. Reg. 7950, effective May 9, 1991; amended in R90-11 at 15 Ill. Reg. 9332, effective June 17, 1991; amended in R91-1 at 15 Ill. Reg. 14473, effective September 30, 1991; amended in R91-12 at 16 Ill. Reg. 2155, effective January 27, 1992

Section 721. Appendix I Wastes Excluded under Section 720.120 and 720.122

Table A Wastes Excluded From Non-Specific Sources

Facility Address Waste Description

Envirite Corp.
Harvey, Illinois

Dewatered wastewater sludges (EPA Hazardous Waste No. F006) generated from electroplating operations; spent cyanide plating solutions (EPA Hazardous Waste No. F007) generated from electroplating operations; plating bath residues from the bottom of plating baths (EPA Hazardous Waste No. F008) generated from electroplating operations where cyanides are used in the process; spent stripping and cleaning bath solutions (EPA Hazardous Waste No. F009) generated from electroplating operations where cyanides are used in the process; spent cyanide solutions from salt bath pot cleaning (EPA Hazardous Waste No. F011) generated from metal heat treating operations; quenching wastewater treatment sludges (EPA Hazardous Waste No. F012) generated from metal heat treating where cyanides are used in the process; wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical

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conversion coating of aluminum after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid:

- 1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total

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content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using gas chromatography, mass spectrometry analysis for the compounds listed in No.3 above as well as the remaining organics on the Priority Pollutant List (incorporated by reference, see 40 CFR 423 App. A (1983) (as adopted at 47 Fed. Reg. 52,309 (Nov. 19, 1982)), not including later amendments).

- 5) The data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator of USEPA by certified mail semi-annually. The USEPA will review this information and if needed will propose to modify or withdraw the exclusion. Should USEPA propose to modify or withdraw the exclusion, Envirote shall promptly provide notice thereof to the Board. The decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at

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Envirite's Harvey, Illinois facility applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition submitted to the USEPA. The exclusion does not apply to the proposed process additions described in the petition submitted to USEPA as recovery including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange.

(Source: Amended in R91-12 at 16 Ill. Reg. 2155 , effective January 27, 1992.)

Table B

Wastes Excluded From Specific Sources

Facility Address	Waste Description
Amoco Oil Company Wood River, Illinois	150 million gallons of DAF float from petroleum refining contained in four surge ponds after treatment with the Chemfix stabilization process. This exclusion applies to the 150 million gallons of waste after chemical stabilization as long as the mixing ratios of the reagent with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples; one grab sample is taken each hour from each treatment unit, composited, and EP toxicity tests performed on each sample. If the levels of lead or total chromium exceed 0.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous; the treatment residue shall be pumped into bermed cells to ensure that the waste is

identifiable in the event that removal is necessary.

Envirite Corp.
Harvey, Illinois

Spent pickle liquor (EPA Hazardous Waste No. K062) generated from steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); wastewater treatment sludge (EPA Hazardous Waste No. K002) generated from the production of chrome yellow and orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K003) generated from the production of molybdate orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K004) generated from the production of zinc yellow pigments; wastewater treatment sludge (EPA Hazardous Waste No. K005) generated from the production of chrome green pigments; wastewater treatment sludge (EPA Hazardous Waste No. K006) generated from the production of chrome oxide green pigments (anhydrous and hydrated); wastewater treatment sludge (EPA Hazardous Waste No. K007) generated from the production of iron blue pigments; oven residues (EPA Hazardous Waste No. K008) generated from the production of chrome oxide green pigments after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid:

- 1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver,

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mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and

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705.

- 4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using gas chromatography, mass spectrometry analysis for the compounds listed in No. 3 above as well as the remaining organics on the Priority Pollutant List (incorporated by reference, see 40 CFR 423 App. A (1983) (as adopted at 47 Fed. Reg. 52,309 (Nov. 19, 1982)), not including later amendments).
- 5) The data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the USEPA Administrator by certified mail semi-annually. The USEPA will review this information and if needed will propose to modify or withdraw the exclusion. Should USEPA propose to modify or withdraw the exclusion, Envirote shall promptly provide notice thereof to the Board. The decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at Envirote's Harvey, Illinois facility applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition submitted to the USEPA. The exclusion does not apply to the proposed process additions described in the petition submitted to USEPA as recovery, including ~~crystallization~~ crystallization, electrolytic metals recovery, evaporative recovery, and ion

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USX Steel Corporation.
Chicago, Illinois

exchange.

Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after April 29, 1991. This exclusion (for 35,000 tons of CSEAFD per year) is conditioned upon the data obtained from USX's full-scale CSEAFD treatment facility. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX shall implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid:

1. Testing: Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. SW-846 is incorporated by reference in 35 Ill. Adm. Code 720.111.

A. Initial Testing: During the first four weeks of operation of the full scale treatment system, USX shall collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide.

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USX shall report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

B. Subsequent Testing: USX shall collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then shall analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of USEPA or the Agency.

2. Delisting levels: If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with

Subpart C of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

3.

Data submittal to and enforcement by USEPA: Within one week of system start-up USX shall notify the Section Chief, Delisting Section (see address below) when its full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) shall be submitted to the Section Chief, Delisting Section, CAD/OSW (OS-333), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. At USEPA's request, USX must submit any other analytical data obtained through conditions (1)(A) or (B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (B) within the specified time period or maintain the required records for the specified time will be considered by USEPA, at its decision, sufficient basis to revoke USX's federal exclusion to the extent directed by USEPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. §6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the

(those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by USEPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this federal exclusion of wastes will be void as if it never had effect or to the extent directed by USEPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

4.

Data Submittal to Agency: The data obtained through condition (1)(A) must be submitted to the Illinois Environmental Protection Agency, Planning and Reporting Section, 2200 Churchill Road, P.O. Box 19276, Springfield, IL 62794-9276 within the time period specified. At Agency's request, USX must submit any other analytical data obtained through conditions (1)(A) or (B) within the time period specified by the Agency. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the

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applicable provisions of Illinois' Environmental Protection Act), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

5. Enforcement by the Agency:
Whenever the Agency finds that USX has violated the standards in this exclusion, has failed to submit the required data obtained from conditions (1)(A) or (B) within the specified time period, has failed to maintain the required records for the specified time or has submitted false, inaccurate or incomplete data, the Agency may take such action as is allowed by Title VIII of the Act.

6. Notification to the Board: Upon modification, termination, revocation, or other alteration of this exemption by USEPA, USX shall file a petition, pursuant to Part 102, with this Board requesting that the Board follow the USEPA action.

(Source: Amended in R91-12 at 16 Ill. Reg. 2155 , effective January) 27, 1992

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1) Heading of Part: Illinois Safety Responsibility Law

2) Code Citation: 92 Ill. Adm. Code 1070

3) Section Numbers Adopted Action

1070.20 Amendment

1070.40 Amendment

4) Statutory Authority: Sections 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 2-104(b)) and Sections 7-100 et seq. of the Illinois Safety Responsibility Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 7-100 et seq.)

5) Effective Date of Amendments: January 24, 1992

6) Does this rulemaking contain an automatic repeal date? Yes X No.

7) Does this amendment contain incorporations by reference? No.

8) Date Filed in Agency's Principal Office: January 24, 1992

9) Notice of Proposal Published in Illinois Register: 15 Ill. Reg. 15428 (October 25, 1991).

10) Has JCAR Issued a Statement of Objections to this Rule? No.

11) Differences between proposal and final version.

There were no differences suggested by the Administrative Code Division, Office of the Secretary of State.

Pursuant to agreement reached with the Joint Committee on Administrative Rules, the following changes were made: The definition of Proper Notice was added at Sec. 1070.40(a), i.e. "Proper Notice" - notice provided by, but not limited to any of the following: (1) Petition in Bankruptcy; (2) Notice of Meeting of Creditors; (3) Schedule A-3 of Schedule of Creditors; (4) Trustee Report of No Assets; (5) Discharge of Bankruptcy; (6) Notice of Automatic Stay; (7) Chapter 13 Wage Earner Plan; also at 1070.40(c) the word "or" was added before "affidavit of lost receipt on a form approved by the Department", and the word "and" was added after that phrase; and in the Notice Page description of the subjects and issues involved, the word "prescribed" was changed to "prescribed".

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the Agreement Letter issued by JCAR? Yes.

13) Will this rule replace any Emergency Rule(s) currently in effect? No.

14) Are there any other amendments pending on this Part? No.

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NOTICE OF ADOPTED AMENDMENT(S)

15) Summary and Purpose of Rule: This proposed rulemaking sets forth the revised procedure for filing proof of financial responsibility pursuant to the Illinois Financial Responsibility Law of the Illinois Vehicle Code; permits acceptance of proof of financial responsibility insurance by document submission other than the AAWVA prescribed form. This proposed rulemaking also revises the procedure for required proof for disposition of security deposits held by the Secretary of State pursuant to the Illinois Safety Responsibility Law of the Illinois Vehicle Code, and eliminates the requirement that persons posting security furnish original receipt or affidavit of lost receipt; also revises disposition of security where depositor is in bankruptcy; and redefines acceptable documentation.

16) Information and answers to questions regarding this Adopted Rule should be directed to:

Robert J. Watkins
Assistant Counsel to the Secretary
2701 S. Dirksen Parkway
Springfield, IL 62723
Tel: 217/782-5356

The full text of the Adopted Rule begins on the next page.

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NOTICE OF ADOPTED AMENDMENT(S)

TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATE

PART 1070

ILLINOIS SAFETY RESPONSIBILITY LAW

Section

- 1070.10 Forms of Security
- 1070.20 Future Proof
- 1070.30 Installation Agreements
- 1070.40 Disposition of Security
- 1070.50 Failure to Satisfy Judgment
- 1070.60 Release From Liability
- 1070.70 Incomplete Unsatisfied Judgment
- 1070.80 Driver's License Restriction for Exclusive Operation of Commercial Vehicles
- 1070.90 Dormant and Dead Judgments
- 1070.100 Bankruptcy

AUTHORITY: Implementing and authorized by the Illinois Safety Responsibility Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1987, ch. 95 1/2, par. 7-100 et seq.).

SOURCE: Filed and effective December 17, 1971; codified at 6 Ill. Reg. 12674; repealed at 7 Ill. Reg. 13678, effective October 14, 1983; new part adopted at 11 Ill. Reg. 20215, effective November 30, 1987; amended at 14 Ill. Reg. 6859, effective April 24, 1990; amended at 14 Ill. Reg. 10107, effective June 12, 1990; amended at 15 Ill. Reg. 15083, effective October 8, 1991; amended at 16 Ill. Reg. 2172, effective January 24, 1992.

Section 1070.20 Future Proof

a) For purposes of this Section, the following definitions shall apply:

"Certificate of ~~Financial Responsibility~~ Insurance" - certificate filed with the Secretary of State's Office as proof that the person has purchased financial responsibility insurance.

"Department" - Department of Driver Services of the Office of the Secretary of State.

"Financial Responsibility Insurance" - insurance used to establish proof of financial responsibility as established in Sections 7-315 and 7-316 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1987, ch. 95 1/2, pars. 7-315 and 7-316).

"Illinois Insurance Guarantee Fund" - section of the Illinois Department of Insurance which deals with disposition of assets following bankruptcy.

"Lien" - claim on property of another as security for payment of a just debt.

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"Motor Vehicle Liability Policy" - an "owner's policy" or an "operator's policy" of liability insurance which is certified pursuant to Section 7-315 or 7-316, and complies with Section 7-302 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code and which complies with the requirements of Section 7-317(b), (c), (d), and (f) of the Illinois Safety Responsibility Law of the Illinois Vehicle Code.

"Proof of Financial Responsibility for the Future" - ability to respond in damages for any liability resulting from the ownership, maintenance, use or operation of a motor vehicle as provided in Section 7-302 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 1987, Ch. 95 1/2, par. 7-302).

"Real Estate Bond" - proof filed pursuant to Section 7-320 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code.

"Secretary of State" - Secretary of State of Illinois.

"Stock" - proportionate share in ownership of corporation held by individual and which is usually represented by a stock certificate.

"Surety" - a person who makes himself/herself liable for another's debts or defaults of obligations.

b) When a person purchases insurance to file proof of financial responsibility for the future, the insurance company will file a certificate of financial responsibility insurance with the Department. The certificate filed shall be either the AAMVA (American Association of Motor Vehicle Administrators) Uniform Financial Responsibility Form, containing the form number and the insured's name and address, license number, and birthdate; current policy number and effective date of the insurance policy; and the name of the insurance company and with the signature of its authorized representative, or other certificate of insurance proof conforming to the requirements of paragraphs 7-315 or 7-316 of the Illinois Financial Responsibility Law of the Illinois Vehicle Code, which is endorsed and certifies policy limits as specified in paragraph 7-302 of this Part. If an owner's rather than operator's policy, it must include the model year, trade name and identification number of the vehicle. The owner's policy must also conform with the amounts specified in Section 7-302 of the Illinois Safety Responsibility Law.

c) The Department shall not accept a certificate of financial responsibility from another state of provision of the Dominion of Canada to satisfy provisions of Section 7-316 of the Illinois Safety Responsibility Law, unless the following conditions are met:

1) The Department receives a copy of the certificate of financial responsibility which has been completed by the insuring company and accepted by the state of province of Canada notifying the Department;

2) The Department receives a letter from the state of province of Canada acknowledging the state of province of Canada's acceptance of the policy and explaining the status and duration of the policy;

3) If the nonresident certificate of financial responsibility expires at a date which is not renewed, the Department shall suspend the person's driving privileges;

d) If a person purchases a certificate of financial responsibility insurance to satisfy his/her requirement to file future proof of financial responsibility and the insurance company fails and is no longer in business, and ceases operations by order of a court, and the Department is notified by the Illinois Insurance Guaranty Fund of the non-operation of the insurance company, the person shall have thirty (30) days after notification by the Department to file a new certificate of financial responsibility insurance or satisfy his/her future proof requirement by cash or one of the other alternate methods provided in Section 7-314 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code. If a suspension has been entered even though the person has filed future proof of financial responsibility within the thirty (30) day time period, the suspension shall be removed.

e) If a person required to furnish proof of financial responsibility for the future chooses to file a bond pursuant to Section 7-320 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code, and the bond is executed by the person giving the proof and two individual sureties, the following conditions must be met:

1) Each surety must own real estate within the State of Illinois.

2) Each surety must have equity in that real estate in the amount of the bond.

3) The bond must be endorsed by the clerk of the court and approved by a judge as provided in Section 7-320 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code.

g) If any evidence of proof of financial responsibility for the future filed under the Illinois Safety Responsibility Law falls below the amount required as provided in Section 7-302 of the Illinois Safety Responsibility Law of the Illinois Vehicle Code, additional evidence shall be required. Cash and securities are deposited with the Illinois State Treasurer and the Treasurer issues the Secretary of State a receipt. The Treasurer monitors the securities and informs

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"Discharged in Bankruptcy" - a legal order for release from a debt or debts.

"Installment Agreement" - agreement to pay debt in payments pursuant to Section 7-208 of the Illinois Safety Responsibility Law.

"Judgment Creditor" - person who is owed money due to a court judgment in his/her favor.

"Proper Notice" - notice provided by, but not limited to any of the following: (1) Petition in Bankruptcy; (2) Notice of Meeting of Creditors; (3) Schedule A-3 of Schedule of Creditors; (4) Trustee Report of No Assets; (5) Discharge of Bankruptcy; (6) Notice of Automatic Stay; (7) Chapter 13 Wage Earner Plan.

"Release" - to give up or surrender a claim.

"Security" - deposit made to satisfy any potential judgment or judgments for money damages following an accident as provided in Section 7-201 of the Illinois Safety Responsibility Law.

If a person deposits a security deposited with the Department and the claim for which the security deposited was deposited is later discharged in bankruptcy, the security deposit shall be refunded to the depositor if the Department receives the original receipt for the security deposit of an affidavit of lost receipt on a form supplied by the Department and the Bankruptcy Court's discharge in bankruptcy does not list the discharged parties and claim Department subsequently receives proper notice that the person has filed a petition for bankruptcy, then the Department shall forward the posted security directly to the bankruptcy court for disbursement during the normal course of the bankruptcy proceedings, and so provide notification to the debtor.

If a person has security deposited with the Department and the claim for which the security was deposited has been discharged in bankruptcy without proper notice having been provided the Department, then upon application by the depositor, the security shall be refunded to the depositor if the Department receives any one but not limited to the following: original receipt for the security deposited, or affidavit of lost receipt on a form approved by the Department, and documentation representing that the claim for which the security was deposited has been discharged, or the bankruptcy court's order of discharge listing the discharged parties and claim.

A person posting a security who wishes to have the security released to a party or parties other than himself/herself shall provide to the Department a notarized letter directing payment to the claimant(s), and either the original receipt for the security deposit, or an affidavit of lost receipt on a form supplied by the Department, or

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the Department if its value falls below the amount required. A certificate of insurance or bonds, real estate bonds that are without liens, stocks, and cash shall be accepted as evidence to establish the additional required proof of financial responsibility for the future. The additional security shall be sent to the Safety and Financial Responsibility Section, Department of Driver Services, 2701 South Dirksen Parkway, Springfield, Illinois, 62723.

The driver's licensees' registration certificates, license plates and registration stickers involved shall be surrendered by the Secretary of State pending such additional proof of financial responsibility being posted with the Department. The person required to post the proof of financial responsibility shall have thirty (30) days after notification by the Department to post the additional proof. Whenever any evidence of proof of ability to respond in damages required to be filed pursuant to the provisions of Article III, Chapter 95 1/2, Section 7-301 no longer fulfills the purpose for which required, the Department shall require other evidence of ability to respond in damages including but not limited to an endorsed certificate of insurance meeting the requirements of Section 7-302 of the Illinois Responsibility Law of the Illinois Vehicle Code, bonds, unencumbered real estate bonds, stocks or cash. The person required to post proof shall have thirty (30) days after notification by the Department to post or file additional proof. If the person fails to post proof within thirty (30) days then the Secretary of State shall suspend the driver's license, registration certificate, license plates and registration sticker pending receipt of such proof.

(Source: Amended at 16 Ill. Reg. 2172, effective January 24, 1993)

Section 1070.40 Disposition of Security

a) For purposes of this Section, the following definitions shall apply:

"Affidavit of Lost Receipt" - the form that must be filed utilized when the receipt is lost. It must contain the name and address of the party, the amount of security deposited, the date and location of the accident, and the receipt number and date.

"Claim" - a demand for something rightfully or allegedly due.

"Claimant" - person or persons making claim.

"Default" - failure to make a payment when due.

"Department" - Department of Driver Services within the Office of the Secretary of State.

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other acceptable documents. The person who is to receive the deposit shall send to the Department a notarized release for the amount of the deposit before payment will be made.

(d) A security deposit shall be released by the Department thirty (30) days after the Department receives a court order directing payment as provided in Section 7-214 of the Illinois Safety Responsibility Law (Ill. Rev. Stat. 1987, ch. 95 1/2, par. 7-214). The deposit shall present the Department with the original receipt for the security of an affidavit of lost receipt. The claimant of his/her authorized representative shall present the Department with a certified copy of a partial or full satisfaction of judgment after payment.

(e) A security deposit shall be released by the Department after the Department receives a record of unsatisfied judgment as provided in Section 7-214 of the Illinois Safety Responsibility Law. The claimant shall present the Department with the original receipt for the security of an affidavit of lost receipt. The claimant of his/her authorized representative shall present the Department with a certified copy of a partial or full satisfaction of judgment before payment.

(f) If a security deposit is refunded because a person enters into an installment agreement and that person later defaults, the Department shall suspend the driving privileges and/or registration of that person until he/she redeposits the original amount of security or meets the other requirements set forth in Section 7-208(c) of the Illinois Safety Responsibility Law.

(g) A security deposit shall be refunded if the Department receives a notice of rescind of certification from the Illinois Department of Transportation, and the original receipt for the security deposit of an affidavit of lost receipt from the person filing the security deposit or an order of exoneration from the Department of Administrative Hearings.

(h) A security deposit shall also be refunded if the Department receives a certified court order indicating the security deposit should be refunded because the judgment has been satisfied, the case has been dismissed, or the party posting the security is not liable; provided the deposit furnishes the Department with the original receipt for the security deposit of an affidavit of lost receipt.

(i) A security deposit shall be refunded if no legal action has been taken within two (2) years after the date of the accident and the Department receives the original receipt for the security deposit of an affidavit of lost receipt and the Department receives a notarized affidavit from the person depositing the security stating that to the best of his/her knowledge, he/she has not been or is not being sued. To verify this,

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the Department shall send the interested party a letter and give him/her two (2) weeks to respond. If he/she responds that he/she has not sued or does not respond, the Department shall close the case and refund the security deposit. If the interested party responds with a copy of the summons and complaint indicating court action has been initiated within two (2) years from the date of the accident, the security shall not be refunded to the depositor.

j) If a judgment creditor wishes to obtain a security deposit to satisfy a judgment, he/she shall notify the safety and financial responsibility section of the Department. The Department shall send a letter to the party who posted the security of his/her authorized representative informing him/her that the security shall be used toward satisfying the judgment if he/she does not otherwise satisfy the judgment and notify the Department within fourteen (14) days of the procedure used to satisfy the judgment. A copy of the letter shall also be sent to the judgment creditor of his/her authorized representative. Thirty (30) days after the first letter is sent, the Department shall send the judgment creditor of his/her authorized representative another letter explaining either that the security is being released of the means by which the judgment shall be satisfied. Upon application by a judgment creditor seeking to obtain a security deposit, the Department shall notify the party who deposited the security or his/her authorized representative of the receipt of the unsatisfied judgment and that the security deposited shall be used toward satisfying the judgment, unless thence notified within 14 days by the party who deposited the security that the judgment has otherwise been satisfied. If no adequate response is obtained from the person who has deposited security, then the Department shall release the deposit to the judgment creditor or his/her authorized representative upon receipt of a full or partial satisfaction of judgment.

k) The Department may receive the original receipt for the security of an affidavit of lost receipt and documentation representing the satisfaction of judgment or partial satisfaction of judgment before the deposit shall be released. If the security deposit only comprises partial satisfaction of the judgment, the remainder shall be paid by the driver or party posting the deposit so released pursuant to an unsatisfied judgment received by the Department only comprises a partial satisfaction of judgment, the remainder shall be paid by the driver or party posting the deposit or the driver shall be suspended. His/her driving privileges and/or vehicle registration shall not be restored until proof of satisfaction of judgment is submitted to the Department and future proof of financial responsibility is filed.

l) A surety bond shall be terminated if no legal action has been taken within two (2) years after the date of an accident, if the Department

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receives from a person a letter for termination of a surety bond stating that to the best of his/her knowledge he/she has not been or is not being sued. To verify this the Department shall send the interested party a letter and give him/her two (2) weeks to respond. If he/she responds that he/she has not been sued or does not respond, the Department shall terminate the surety bond. If the interested party responds with a copy of the summons and complaint indicating court action has been initiated within two (2) years from the date of the accident, the surety bond shall not be terminated.

- m) If a judgment creditor wishes to obtain a ~~summary of the form of~~ payment from a surety bond to satisfy a judgment, he/she shall notify the Safety and Financial Responsibility Section of the Department. The Department shall send a letter to the party who purchased the surety bond and his/her authorized representative informing him/her that the surety bond shall be used toward satisfying the judgment if he/she does not otherwise satisfy the judgment and notify the Department within fourteen (14) days of the procedure used to satisfy the judgment. A copy of the letter shall also be sent to the judgment creditor, his/her authorized representative, and the surety company. ~~Within 30 days after the filing of the~~ The Department shall thereafter make a demand on the surety company for the bond and send a copy of the letter to the judgment creditor and his/her authorized representative. If the surety bond only comprises partial satisfaction of judgment, the remainder shall be paid by the driver or the person who posted the surety bond or the driver's license and/or registration shall be suspended. His/her driving privileges and/or vehicle registration shall not be restored until proof of satisfaction of judgment is submitted to the Department and future proof of financial responsibility is filed.

(Source: Amended at 16 Ill. Reg. 2172, effective January 24, 1992)

- 1) Heading of Part: Issuance of Licenses
- 2) Code Citation: 92 Ill. Adm. Code 1030
- 3) Section Numbers Adopted Action
1030.84 Amendment
- 4) Statutory Authority: Sections 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 2-104(b)) and Sections 6-100 et seq. of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 6-100 et seq.)
- 5) Effective Date of Amendments: January 24, 1992
- 6) Does this rulemaking contain an automatic repeal date? Yes X No.
- 7) Does this amendment contain incorporations by reference? No.
- 8) Date Filed in Agency's Principal Office: January 24, 1992
- 9) Notice of Proposal Published in Illinois Register: 15 Ill. Reg. 14198 (October 4, 1991).
- 10) Has JCAR Issued a Statement of Objections to this Rule? No.
- 11) Differences between proposal and final version.
There were no differences suggested by the Administrative Code Division, Office of the Secretary of State.
There were no changes suggested by the Joint Committee on Administrative Rules.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the Agreement Letter issued by JCAR? Yes.
- 13) Will this rule replace any Emergency Rule(s) currently in effect? No.
- 14) Are there any other amendments pending on this Part? No.
- 15) Summary and Purpose of Rule: This proposed rulemaking sets forth the revised procedure for filing proof of financial responsibility pursuant to the Illinois Financial Responsibility Law of the Illinois Vehicle Code; permits acceptance of proof of financial responsibility insurance by document submission other than the AAMVA prescribed form. This proposed rulemaking also revises the procedure for required proof for disposition of security deposits held by the Secretary of State pursuant to the Illinois Safety Responsibility Law of the Illinois Vehicle Code, and eliminates the

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requirement that persons posting security furnish original receipt or affidavit of lost receipt; also revises disposition of security where depositor is in bankruptcy; and redefines acceptable documentation.

- 16) Information and answers to questions regarding this Adopted Rule should be directed to:

Robert J. Watkins
Assistant Counsel to the Secretary
2701 S. Dirksen Parkway
Springfield, IL 62723
Tel: 217/782-5356

The full text of the Adopted Rule begins on the next page.

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TITLE 92: TRANSPORTATION
CHAPTER II: SECRETARY OF STATEPART 1030
ISSUANCE OF LICENSES

Section	
1030.10	What Persons Shall Not be Licensed or Granted Permits
1030.11	Procedure for Obtaining a Driver's License
1030.15	Cite for Re-examination
1030.20	Classification of Drivers-References
1030.30	Classification Standards
1030.40	Fifth Wheel Equipped Trucks
1030.50	Bus Driver's Authority, Religious Organization
1030.55	Commuter Van Driver Operating a For-Profit Ridesharing Arrangement
1030.60	Employer Certification Program
1030.63	Religious Exemption for Social Security Numbers
1030.65	Instruction Permits
1030.70	Driver's License Testing/Vision Screening
1030.75	Driver's License Testing/Vision Screening With Vision Aid Arrangements Other Than Standard Eye Glasses or Contact Lens(es)
1030.80	Driver's License Testing/Written Test
1030.84	Vehicle Inspection
1030.85	Driver's License Testing/Road Test
1030.86	Multiple Attempts/Road Test
1030.88	Exemption of Facility Administered Road Test
1030.89	Temporary Licenses
1030.90	Requirement For Photograph and Signature of Licensee On Driver's License
1030.91	Disabled Person/Handicapped Identification Card
1030.92	Restrictions
1030.93	Restricted Local Licenses
1030.94	Duplicate or Corrected Driver's License or Instruction Permit
1030.95	Consular Licenses
1030.100	Anatomical Gift Donor
1030.110	Emergency Medical Information Card
1030.115	Change-of-Address
1030.120	Issuance of a Probationary License
1030.130	Grounds for Cancellation of a Probationary License
1030.	Appendix A Questions Asked of a Driver's License Applicant
1030.	Appendix B Acceptable Identification Documents

AUTHORITY: Implementing Article I of the Illinois Driver Licensing Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, pars. 6-100 et seq.) and authorized by Section 2-104(b) of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 2-104(b)).

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SOURCE: Filed March 30, 1971; amended at 3 Ill. Reg. 7, p. 13, effective April 2, 1979; amended at 4 Ill. Reg. 27, p. 422, effective June 23, 1980; amended at 6 Ill. Reg. 2400, effective February 10, 1982; codified at 6 Ill. Reg. 12674; amended at 9 Ill. Reg. 2716, effective February 20, 1985; amended at 10 Ill. Reg. 303, effective December 24, 1985; amended at 10 Ill. Reg. 18182, effective October 14, 1986; amended at 11 Ill. Reg. 9331, effective April 28, 1987; amended at 11 Ill. Reg. 18292, effective October 23, 1987; amended at 12 Ill. Reg. 3027, effective January 14, 1988; amended at 12 Ill. Reg. 13221, effective August 1, 1988; amended at 12 Ill. Reg. 16915, effective October 1, 1988; amended at 12 Ill. Reg. 19777, effective November 15, 1988; amended at 13 Ill. Reg. 5192, effective April 1, 1989; amended at 13 Ill. Reg. 7808, effective June 1, 1989; amended at 13 Ill. Reg. 12880, effective July 19, 1989; amended at 13 Ill. Reg. 12978, effective August 13, 1989; amended at 13 Ill. Reg. 15112, effective September 8, 1989; amended at 13 Ill. Reg. 17095, effective October 18, 1989; amended at 14 Ill. Reg. 4570, effective March 8, 1990; amended at 14 Ill. Reg. 4908, effective March 9, 1990; amended at 14 Ill. Reg. 5183, effective March 21, 1990; amended at 14 Ill. Reg. 8707, effective May 16, 1990; amended at 14 Ill. Reg. 9246, effective May 16, 1990; amended at 14 Ill. Reg. 9498, effective May 17, 1990; amended at 14 Ill. Reg. 10111, effective June 11, 1990; amended at 14 Ill. Reg. 10510, effective June 18, 1990; amended at 14 Ill. Reg. 12077, effective July 5, 1990; amended at 14 Ill. Reg. 15487, effective September 10, 1990; amended at 15 Ill. Reg. 15783, effective October 18, 1991; amended at 16 Ill. Reg. 2182, effective January 24, 1992.

Section 1030.84 Vehicle Inspection

- a) For the purposes of this Section terms shall be defined as follows:

"Examiner" - employee of the Secretary of State who is qualified to administer a road test.

"First Division Vehicle" - those motor vehicles which are designed to carry not more than ten persons.

"Commercial Motor Vehicle" - a motor vehicle having a GVWR of 26,001 pounds or more, or such lesser GVWR as subsequently determined by Federal regulations (49 CFR 383); or any combination of vehicles with a GVWR of 26,001 pounds or more, provided the GVWR of any vehicle(s) being towed is 10,001 pounds or more; or a vehicle designed to transport 16 or more persons; or a vehicle transporting hazardous materials that is required to be placarded. The definition does not include recreational vehicles as defined in Section 1-169 of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 1-169) when operated primarily for personal use, military vehicles being operated by non-civilian personnel or firefighting equipment owned or operated by or for a governmental entity.

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"Gross Combination Weight Rating (GCWR)" - the GVWR of the power unit plus the GVWR of the towed unit(s) or the combined registered weight of the power unit plus the towed unit, whichever is greater.

"Gross Vehicle Weight Rating (GVWR)" - the value specified by the manufacturer(s) as the maximum loaded weight of a single vehicle, or the registered gross weight, whichever is greater.

"Hazardous Materials" - substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce. (49 U.S.C.A. 1802.)

"Mandatory Insurance" - requirement of insurance as provided by Section 7-601 et seq. of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 7-601.).

"Mandatory Liability Insurance Policy" - a liability insurance policy issued in amounts no less than the minimum amounts set for bodily injury or death and for destruction of property pursuant to Section 7-203 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 7-203), and issued in accordance with the requirements of Sections 143a and 143a-2 of the Illinois Insurance Code, as amended (Ill. Rev. Stat. 1989, ch. 73, par. 755a). The definition does not include vehicles subject to the provisions of Chapters 18 or 18a, Article III, or Sections 7-609, 12-606, or 12-707.01 of the Illinois Vehicle Code; vehicle required to file proof of liability insurance with the Illinois Commerce Commission; vehicles covered by a certificate of self insurance pursuant to Section 7-502 of the Illinois Vehicle Code; vehicles owned by the United States Government, State of Illinois, or any political sub-division, municipality or local mass transit district; implements of husbandry, other vehicles complying with laws which require insurance in amounts meeting or exceeding the minimum amounts required under the Illinois Vehicle Code; and inoperable or stored vehicles that are not operated.

"Motorcycle" - every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

"Pedalcycle" - motor driven cycle whose speed attainable in one mile is thirty miles per hour or less, which is equipped with a motor which produces two brake horsepower or less.

"Registration Sticker" - a device issued by the Secretary of State to be attached to a rear registration plate that will renew the registration and registration plate or plates for a predetermined period of time.

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"Religious Organization Bus" - any vehicle other than a vehicle of the First Division or a school bus, as defined in Section 1-182 of the Illinois Vehicle Code, which is exclusively owned and operated by a religious organization and is used primarily in conducting the official activities of such organization.

"Second Division Vehicle" - vehicles which are designed for carrying more than ten persons, those designed or used for living quarters, those vehicles which are designed for pulling or carrying property, freight or cargo, those motor vehicles of the First Division remodeled for use and used as motor vehicles of the Second Division, and those motor vehicles of the First Division used and registered as school buses.

"Secretary of State" - the Secretary of State of Illinois.

"Senior Citizen Transportation Vehicle" - any vehicle other than a vehicle of the First Division or a school bus, as defined in Section 1-182 of the Illinois Vehicle Code, which is exclusively owned and operated by a senior citizen organization and is used primarily in conducting the official activities of such organization.

- b) An applicant, who is required to take the road test, as defined in Section 1030.85 of this Part, must provide a representative vehicle for the test. The vehicle will be safety inspected by an examiner prior to the road test. A vehicle which is not properly equipped or which does not have equipment in safe operating order will be rejected for use in the road test. The following equipment shall be safety inspected as required for the type of representative vehicles being used to administer the road test:

- 1) Registration plates shall be attached or affixed to the motor vehicle pursuant to Section 3-413 of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 3-413.) The owner of a vehicle which does not have registration plates and/or a registration sticker shall present proper documentation, pursuant to Section 3-407 of the Illinois Vehicle Title and Registration Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 3-407), showing that proper registration has been applied for, prior to use of the vehicle for road test.

- 2) When lighted lamps are required pursuant to Section 12-201(b) of the Illinois Vehicle Equipment Law for the road test, motor vehicles shall have mounted, exhibit and operate such lamps pursuant to Sections 12-201, 12-202, 12-204, 12-205, 12-207, 12-208, 12-209, 12-210 and/or 12-215 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat.

19879, ch. 95 1/2, pars. 12-201, 12-202, 12-204, 12-205, 12-207, 12-208, 12-209, 12-210 and/or 12-215.) A motorized pedalcycle must have mounted and display a lamp(s) and reflector as required in Section 11-1507.1 of the Illinois Rules of the Road of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, §11-1507.1.)

- 3) When windshield wipers are required pursuant to Section 12-503(d) of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-503(d)), they must be in proper operating condition as defined in the same statute.

- 4) The horn must be in proper working order pursuant to Section 12-601 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-601.) Horns do not include a siren, whistle, or bell.

- 5) No person shall drive a motor vehicle with any sign, poster, window application, reflective material or nonreflective material upon the front windshield, sidewings, or side windows immediately adjacent to each side of the driver which materially obstructs, obscures or impairs the view from both within or without the vehicle. No person shall drive a motor vehicle with any objects placed or suspended between the driver and the front windshield or rear window which materially obstructs the driver's view. No person shall drive a motor vehicle when the windshield, side or rear windows are in such defective condition or repair as to materially impair the driver's view to the front, side or rear. A vehicle equipped with an unobstructed rear view mirror will be deemed to be in compliance in the event the rear window of the vehicle is materially obscured. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-503.)

- 6) No vehicle may be used for the road test if one or more tires is unsafe as defined in Section 12-405 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-405.) A vehicle equipped with metal studded tires may not be used for the road test.

- 7) The service brakes, foot or hand operated, must be in a condition which allows activation with one movement of the activating device. All First and Second Division vehicles must be equipped with an operable emergency brake. A Class M motorcycle #M0W14 shall have two methods of braking. A Class L motor-driven cycle or pedalcycle shall have at least one method of braking.

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- 8) Each driver and front seat passenger of a 1965 or later model motor vehicle operated on a street or highway in this state shall wear a properly adjusted and fastened seat safety belt pursuant to Section 12-603.1 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-603.1.) Such requirements shall not apply to a driver possessing a written statement from a physician that such a person is unable, for medical or physical reasons, to wear a seat safety belt, or to certain motor vehicles which are not required to be equipped with seat safety belts under Federal Law. (49 CFR 393.93.) A retractable lap seat belt shall be provided for the driver of a school bus and must be used by the driver at all times while the bus is being operated. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-807.)
- 9) Every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle. A rectangular rearview mirror shall be located on the right and left sides of each Second Division school bus forward of the driver's seat. The mirrors shall have a minimum horizontal dimension of five inches and a minimum vertical dimension of ten inches.
- 10) The seat for the person giving the examination must be securely affixed in a location that assures the examiner's safety and allows the examiner to perform proper scoring of the road test pursuant to Section 1030.85 of this Part. The seat must be free from excessive soil, grease, and should have no protruding springs. Vehicles must not have loose objects on the seats or floors which could pose a danger to the driver or examiner.
- 11) The steering wheel must not be broken or have any part missing. The steering wheel when worked back and forth shall not have more than 5-10 degrees of free play (approximately 2" at the rim of a 20" steering wheel). Vehicles which have excessive free play (more than 10 degrees) in the steering mechanism shall be rejected as unsafe. Free play is the degree of movement the steering wheel must have before the front wheels move.
- 12) Both front vehicle doors must be operable from the inside and outside of the vehicle with the standard latching mechanism. Doors may not be wired or strapped shut.
- 13) Every motor vehicle of a width or design which would not allow hand signals to be adequately visible from the front and rear, shall be equipped with an electric turn signal device which indicates the intention of the driver to turn to the right or to

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- the left. Such signalling device shall be in the form of flashing red or amber lights located at the rear of the vehicle on the side toward which the turn is to be made, mounted on the same level and as widely spaced laterally as practicable. Turn signal lamps must be visible from a distance of not less than 300 feet in normal sunlight.
- 14) Any motor vehicle or combination vehicle which operates with air brakes must have air brake hoses that are free from breaks, leaks or bulges which may prevent or hinder the safe operation of the vehicle braking system. Any motor vehicle or combination vehicle which operates with air brakes will not be permitted to be used for the road test if the air pressure gauge reading fails to maintain 95 pounds per square inch pressure during normal pressure buildup.
- 15) Three safety flags, flares, fuses or reflectors shall be provided in all Second Division vehicles as described in Section 12-702 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-702.)
- 16) An operating speedometer shall be mounted in all vehicles designated as a school bus in such a manner that it is readable to the seated driver.
- 17) The emergency doors at the front and the rear of a designated school bus should open from the inside. The latch must be in operable condition. An alarm system that is visible and audible to the driver must be activated when the engine is running and the emergency door is unlatched.
- 18) One fire extinguisher shall be located in a position readily accessible to the driver of a school bus pursuant to Section 12-808 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-808.)
- 19) A school bus shall carry a removable and readily identifiable first aid kit, mounted in full view of and readily accessible to the driver pursuant to Section 12-809 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-809.)
- 20) All school buses shall be equipped with an 8-lamp flashing signal system consisting of two alternately flashing red signal lights and two flashing yellow signal lights mounted at the front and rear of the bus pursuant to Section 12-805 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-805.)

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Stat. 19879, ch. 95 1/2, par. 12-805.) Each signal lamp shall be a sealed beam at least 5 1/2 inches in diameter and shall have sufficient intensity to be visible at 500 feet in normal sunlight. The system shall be actuated only by means of a manual switch. There shall be a device for indicating to the driver that the system is operating properly or is inoperative.

- 21) All Second Division vehicles, as required by Section 12-202 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-202), shall have mounted and properly display clearance, identification and side marker lamps. Such lamps shall be illuminated for the road test, during periods when headlights are required pursuant to Section 12-201 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-201.)

- 22) A stop arm shall be placed on the driver's side of each Second Division school bus and may be operated either manually or mechanically. The design of this stop arm shall comply with Section 12-803 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 12-803.)

- 23) The tailpipe(s) of each Second Division school bus should extend beyond the rear end of the chassis frame, but not beyond the rear of the bumper.

- 24) A religious organization bus or senior citizen transportation vehicle may be of any color and have any markings designating its purpose other than those required for school buses pursuant to Sections 12-801, 12-802, 12-804 and 12-806 of the Illinois Vehicle Equipment Law of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, pars. 12-801, 12-802, 12-804 and 12-806.) A road test, for a religious organization bus or senior citizen transportation vehicle restriction, may be administered in any vehicle of the proper representative type for the license restriction requested. (92 Ill. Adm. Code 1030.92.)

- 25) No person shall operate any motorcycle, motor-driven cycle or pedalcycle for the road test with handlebars higher than the height of the shoulders of the operator when seated in the upright driving position.

- 26) The operator of a motorcycle, motor-driven cycle or pedalcycle, used for the road test shall be protected by glasses, goggles or a transparent shield pursuant to Section 11-1404 of the Illinois Rules of the Road of the Illinois Vehicle Code. (Ill. Rev. Stat. 19879, ch. 95 1/2, par. 11-1404.)

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- 27) Second Division vehicles or medical transport vehicles shall display a certificate of safety then in effect pursuant to Sections 13-111 and 13-114 of the Illinois Vehicle Inspection Law of the Illinois Vehicle Code (Ill. Rev. Stat. 19879, ch. 95 1/2, pars. 13-111 and 13-114), except those vehicles displaying a Department of Transportation federal census number on the side of the vehicle shall not be subject to such certificate.

- (c) Prior to taking a road test, as defined in Section 1030.85 of this Part, each applicant shall execute an affirmation in compliance with Section 1-109 of the Illinois Code of Civil Procedure stating that the vehicle to be used for the road test is insured pursuant to, and in compliance with the Illinois Mandatory Insurance Law of the Illinois Vehicle Code, or falls within one of the stated exempted categories. (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 7-601 et seq.). If the applicant refuses to execute or fails to comply with this Section, then no road test shall be given the applicant in that vehicle until such time as the applicant complies.

(Source: Amended at 16 Ill. Reg. 2182, effective January 24, 1992.)

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1) Heading of Part: Accommodation of Utilities on Right-of-Way2) Code Citation: 92 Ill. Adm. Code 5303) Section Numbers: Adopted Action:

530.10	530.230	530.440	530.830	New Section
530.20	530.240	530.450	530.840	New Section
530.30	530.250	530.460	530.900	New Section
530.40	530.260	530.470	530.111.A	New Section
530.50	530.270	530.480		New Section
530.60	530.275	530.500		New Section
530.100	530.280	530.510		New Section
530.110	530.290	530.520		New Section
530.120	530.300	530.530		New Section
530.130	530.310	530.600		New Section
530.140	530.320	530.610		New Section
530.150	530.330	530.700		New Section
530.200	530.400	530.710		New Section
530.210	530.410	530.800		New Section
530.220	530.420	530.810		New Section
530.225	530.430	530.820		New Section

4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 121, pars. 4-201.1 and 9-113.5) Effective date of rules: January 27, 19926) Does this rulemaking contain an automatic repeal date? No7) Does this rule contain incorporations by reference? Yes
These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.8) Date filed in agency's principal office: January 24, 19929) Notice of proposal published in Illinois Register:

February 22, 1991, 15 Ill. Reg. 2940

10) Has JCAR issued a Statement of Objections to these rules?
No11) Differences between proposal and final version:

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Technical corrections suggested by JCAR have been made throughout the rule.

The following substantive changes were made in agreement with JCAR:

Section headings at Sections 530.225, 530.480 and 530.530 have been changed in the Table of Contents.

The Department removed the definition of the word "Part" in Section 530.30.

A definition of "facility" has been added to the Part.

The Department changed the words "railroad tracks" to "tracks and rails" in the definition of Spur Track in Section 530.30.

The last sentence in Section 530.40(a) has been deleted.

Section 530.40(b) has been deleted and the remaining subsections have been renumbered.

Newly labeled Sections 530.40(b) and (c) have been revised.

Newly labeled Section 530.40(i) has been revised.

Section 530.50(a) has been revised.

Section 530.60(c) has been revised to include Levee Districts.

Section 530.110(b) is new language.

Section 530.130(a) has been revised.

New provisions were added to Section 530.130 and the subsections were relabeled.

Section 530.225 was revised and is now entitled "Release and Indemnification".

Section 530.230(a) was revised.

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Section 530.230(a)(10) has been revised.

Section 530.300 has been revised.

The phrase "in a timely manner" was removed from Section 530.310(a).

Section 530.310(b)(2) has been revised.

Section 530.320 has been revised.

Section 530.400(a)(3) has been revised.

Sections 530.410(c)(2)(A) and (B) have been revised.

Section 530.410(c)(2)(F) was revised.

Section 530.450(a) has a minor correction.

In Section 530.460(b)(4), the Department changed the word "should" to "shall."

Section 530.470 has been revised.

Section 530.480 has been rewritten.

Section 530.530 has been renamed and revised.

In Section 530.710(b), the word "should" has been changed to "shall."

Sections 530.800(a)(1) and (2) have been reworded.

In Section 530.810(a)(3), 30 days has been changed to 90 days.

In Section 530.830(a), language has been added.

In Section 530.900(a), 15 days has been changed to 30 days.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes

13) Will this rule replace an Emergency Rule currently in effect? No

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14) Are there any amendments pending on this Part? No

15) Summary and purpose of rules:

By this rulemaking, the Department is adopting procedures for regulating the accommodation of public utilities on the right-of-way of the State Highway System which will provide public benefits such as the preservation of the integrity, safe usage, and visual qualities of the State Highway System.

This Part allows utilities' longitudinal installations on the right-of-way. In addition, this Part sets standards for permit application, revocation of permits, and the location, installation and maintenance of utilities' facilities on right-of-way of the State Highway System.

The 85th General Assembly passed, and the Governor signed, Public Act 85-540 which allowed longitudinal utility installations on controlled access highway when allowed by the Federal Highway Administration (FHWA). In 1988, the FHWA approved longitudinal utility installations on controlled access Federal-Aid highways. In March of 1990, the FHWA approved the Department's Utility Accommodation Plan for the State Highway System.

Elsewhere in this issue of the Illinois Register, the Department is adopting a repealer of the old rules on accommodation of utilities on right-of-way, replacing them with this Part.

A discussion of the significant differences between the old rules on utility accommodations and the new rules follows.

The materials incorporated by reference have been updated in the new Part and several publications have been added.

The Department added new definitions required by the revisions to the new Part.

Section 530.225, entitled "Release and Indemnification," has been added to the new Part.

The Department removed the provisions included in the old Section entitled "Authority." Direct quotations from the Illinois Highway Code are unnecessary.

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"Review by Federal Highway Administration" in the old Part have been deleted. The Federal Highway Administration has approved the Department's Utility Accommodation Plan, and, in the future, only variances will require FHWA approval.

The provisions found in Section 530.119 can now be found in Subpart I, "Administrative Remedies." The provisions found in Section 530.120 can now be found in Section 530.40, "Legal Obligations."

The provisions contained in Section 530.121, "Miscellaneous Facilities" have been deleted from the new rule. The definition of "Utility" has been clarified and the new Part applies only to those facilities defined as a utility. Miscellaneous facilities are not addressed.

The provisions contained in Section 530.122, "Abandonment" are now included in Section 530.830, "Non-Use."

The provisions found in Section 530.123 of the old Part are now included in Section 530.40, "Legal Obligations."

The provisions found at Section 530.302 are now included in Section 530.410.

The provisions found at Section 530.303 are now included in Section 530.410.

The provisions found at Section 530.401 are now included in Section 530.420.

The provisions contained in Section 530.402 are now included in Section 530.420.

The provisions contained in Section 530.403 are now included in Section 530.420.

The provisions contained in Section 530.501 are now included in Section 530.430.

The provisions contained in Section 530.502 are now included in Section 530.430.

A new Section entitled "Legal Obligations" has been added to the new Part and the provisions in "Permits" from the old Part are now included under "Legal Obligations."

The material under "Signatory Authority" in the old Part has been deleted.

The Section entitled "Fees and Assessments" has been expanded to specify that fees can be charged. The material under "Traffic Protection" in the old Part is now contained in Section 530.240.

The material in the Section entitled "Exceptions to Policy" is now included in the new Section entitled "Variances."

Some Sections in the old Part have been deleted and the information can now be found under "Purpose" in the new rule.

The references to "Local Road Systems" have been deleted from the new rule because the new rule is limited to State highways only.

Encasement requirements for specific utilities are included in appropriate Sections under "Subpart D: Specific Permit Conditions."

The provisions contained in "Construction Methods" in the old Part are now contained in Section 530.500 of the new Part and in Subpart D.

The language in the old Part entitled "Liabilities" is now contained in Section 530.50 "Indemnification and Insurance."

The new Part includes Sections on Surety Bonds (See Sections 530.270 - 530.280). The bond submittal procedures and the bond forms described in the old Part have been eliminated from the new Part. The names of the surety bonds in the Section entitled "Surety Bond" have been changed.

The provisions contained in the Section entitled

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The provisions contained in Section 530.503 are now included in Section 530.430.

The provisions contained in Section 530.601 are now included in Section 530.440.

The provisions found at Section 530.602 are now included in Section 530.440.

The provisions found at Section 530.603 are now included in Section 530.440.

The provisions found in "Subpart H: Tree Trimming for Line Clearance," can now be found in "Subpart F: Vegetation Control."

The provisions in "Subpart I: Utility Attachments to Bridges or Traffic Structures;" is now included in "Subpart G: Utility Attachments to Bridges or Traffic Structures."

The provisions in Section 530.803 are now included in Section 530.700(f).

The provision contained in Section 530.804 is now included in Section 530.830(b).

Most of Subpart J of the old Part has been deleted because it describes internal processing procedures.

Sections 530.907 and 530.909 can now be found in Sections 530.60 and 530.800(b) respectively.

The Sections new to Part 530 which are not included in the old Part 530 are as follows:

530.110

Emergency Contingency Plans

530.140

Access of Freeway Right-of-Way

530.200

Obligation to Comply

530.210

Application Provision

530.220

Departmental Standards

530.225

Release and Indemnification

530.270

Requirement for a Surety Bond

530.275

Surety Bond

530.280

Surety Bond Coverage

530.300

As Built Plans

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530.330

Design of Facilities

530.470

Above-Ground Facilities - Other Utilities

530.480

Track and Rail Facilities

530.520

Post Installation Location

530.530

Track and Rail Inspection and Maintenance

530.800

Denial of Applications

530.810

Sanctions and Other Remedies

530.820

Incompatibility with Highway Use

530.840

Change of Ownership or Owners' Identity or Legal Status

530.900

Administrative Review

530.111

Illustration A--District Boundary Map

Mr. Robert Jones

Engineer of Maintenance

Department of Transportation

Division of Highways

2300 South Dirksen Parkway

Springfield, Illinois 62764

(217) 782-7231

The full text of the Adopted Rules begins on the next page:

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TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER f: HIGHWAYS

PART 530
ACCOMMODATION OF UTILITIES ON RIGHT-OF-WAY

SUBPART A: GENERAL PROVISIONS

Section	Purpose
530.10	Incorporation by Reference
530.20	Definitions
530.30	Legal Obligations
530.40	Indemnification and Insurance
530.50	Utility Permits to Public Entities
530.60	

SUBPART B: PERMIT APPLICATION REQUIREMENTS

Section	
530.100	Permit Application
530.110	Emergency Contingency Plans
530.120	Fees or Assessments
530.130	Variances
530.140	Access of Freeway Right-of-Way
530.150	Suitability of Materials

SUBPART C: GENERAL PERMIT CONDITIONS

Section	
530.200	Obligation to Comply
530.210	Application Provision
530.220	Departmental Standards
530.225	Release and Indemnification
530.230	Location of Facilities
530.240	Traffic Control
530.250	Cleanup and Restoration
530.260	Scenic Restrictions
530.270	Requirement for a Surety Bond
530.275	Surety Bond
530.280	Surety Bond Coverage
530.290	Maintenance
530.300	As-Built Plans
530.310	Obligation to Remove, Relocate or Modify
530.320	Apportionment of Costs
530.330	Design of Facilities

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SUBPART D: SPECIFIC PERMIT CONDITIONS

Section	
530.400	Underground Facilities - Power and Communication Lines
530.410	Underground Facilities - Gas Transmission Lines
530.420	Underground Facilities - Petroleum Products Pipelines
530.430	Underground Facilities - Waterlines
530.440	Underground Facilities - Sewer Lines and Drainage Lines
530.450	Above-Ground Facilities - Power and Communication Lines
530.460	Above-Ground Facilities - Light Poles and Lighting Power Lines
530.470	Above-Ground Facilities - Other Utilities
530.480	Track and Rail Facilities

SUBPART E: CONSTRUCTION METHODS AND MAINTENANCE WORK ON UTILITIES

Section	
530.500	Construction Methods for Utility Installations
530.510	Encasement
530.520	Post Installation Location
530.530	Track and Rail Inspection and Maintenance

SUBPART F: VEGETATION CONTROL

Section	
530.600	Tree Trimming
530.610	Chemical Vegetation Control

SUBPART G: UTILITY ATTACHMENTS TO BRIDGES OR TRAFFIC STRUCTURES

Section	
530.700	General
530.710	Methods of Attachment

SUBPART H: APPLICATION DENIAL, REVOCATION AND SANCTIONS

Section	
530.800	Denial of Applications
530.810	Sanctions and Other Remedies
530.820	Incompatibility With Highway Use
530.830	Non-Use
530.840	Change of Ownership or Owner's Identity or Legal Status

SUBPART I: ADMINISTRATIVE REMEDIES

Section	
530.900	Administrative Review

530. Illustration A--District Boundary Map

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AUTHORITY: Implementing Section 9-113 and authorized by Section 4-201.1 of the Illinois Highway Code (Ill.Rev.Stat.1989, ch. 121, pars. 4-201.1 and 9-113).

SOURCE: Adopted at 3 Ill. Reg. 19, p. 45, effective May 7, 1979; codified at 7 Ill. Reg. 3202; Part repealed, new Part adopted at 16 Ill. Reg. 2193, effective January 27, 1992.

SUBPART A: GENERAL PROVISIONS

Section 530.10 Purpose

- a) The purpose of this Part is to establish policies and procedures for accommodating utilities on right-of-way of the Illinois State Highway System, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the State Highway System.
- b) A decision regarding the accommodation of a utility at a particular location should be made consistent with sound engineering practices.
- c) The Department's determination would include an evaluation of the direct and indirect environmental and economic effects of any loss of productive agricultural land which would result from the disapproval of the use of the right-of-way of a highway for the accommodation of such utility. Thus, while this Part provides standards for accommodating utilities on right-of-way of the Illinois State Highway System, under the jurisdiction of the Department, this Part is not a substitute for sound engineering judgment (See Section 530.30, "Sound Engineering Judgment").
- d) Because it is impossible to anticipate all future highway needs or proposals, the Department reserves the right to deny an application or to deviate from the standards of this Part if sound engineering reasons dictate such action.
- e) This Part applies to all utility facilities on public highway right-of-way in which the Department has an interest, whether those facilities are permitted or not and whether those facilities were in place before or after the promulgation of this Part.
- f) This Part supersedes the Department's Policy on the Accommodation of Utilities on Right-of-way of the Illinois State Highway System issued May, 1979 and all prior issues.

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Section 530.20 Incorporation by Reference

- a) This Part incorporates references which are the basis and guidelines for the development of the Department's policy for accommodation of utilities on right-of-way of the Illinois State Highway System. Where specific reference is made, and that reference incorporated is a material by reference, the material incorporated is a part of this Part and shall be that which is effective as indicated, not including any later amendments or editions. Copies of the appropriate materials are available from the Department's Central Bureau of Maintenance, Division of Highways, 2300 South Dirksen Parkway, Springfield, Illinois 62764 and all nine highway District offices (see Section 530.11 Illustration A).
- 1) American Association of State Highway and Transportation Officials (AASHTO) - A Guide for Accommodating Utilities Within Highway Right-of-Way (Copyright 1981).
- 2) AASHTO - A Policy on the Accommodation of Utilities Within Freeway Right-of-Way (Copyright 1989).
- 3) U.S. Department of Transportation, Federal Highway Administration (FHWA) - Federal-Aid Highway Program Manual Transmittal 426 (HNG-12) dated November 11, 1988 (Volume 6, Chapter 6, Section 3, Subsection 2).
- 4) U.S. Department of Transportation, Federal Highway Administration - Federal-Aid Highway Program Manual Transmittal 74 (HRW-0) dated October 4, 1974 (Volume 7, Chapter 4, Section 3).
- 5) Institute of Electrical and Electronics Engineers, Inc. - American National Standards, National Electrical Safety Code (ANSI C2-1990).
- 6) The American Society of Mechanical Engineers - American National Standards, Gas Transmission and Distribution Piping Systems (ANSI-ASME B31.8), 1989 edition.
- 7) The American Society of Mechanical Engineers - American National Standards, Liquid Petroleum Transportation Piping Systems (ANSI-ASME B31.4), 1989 edition.
- 8) The Associated General Contractors of Illinois - Standard Specifications for Water and Sewer Main Construction in Illinois, 4th edition, May 1986 publication.

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- 9) International Society of Arboriculture - Valuation of Landscape Trees, Shrubs and Other Plants (Copyright 1988).
- 10) Office of Pipeline Safety Operations, U.S. Department of Transportation (49 CFR Parts 191 and 192) - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, revised as of October 1, 1988.
- 11) AASHTO - Roadside Design Guide (Copyright 1989).
- 12) Office of Federal Register National Archives and Record Administration - National Bridge Inspection Standards (23 CFR 25), revised as of April 1, 1984.

b) NOTE: The references listed above are also available through the following sources:

- 1) Items 1, 2 and 11:

AASHTO
444 North Capitol, N.W.
Suite 225
Washington, D.C. 20001

- 2) Items 3, 4, 10 and 12:

United States Department of Transportation
Federal Highway Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

- 3) Item 5:

American National Standards Institute
1430 Broadway
New York, New York 10018

- 4) Items 6 and 7:

The American Society of Mechanical Engineers
345 East 47th Street
New York, New York 10017

- 5) Item 8:

The Associated General Contractors of Illinois
3219 Executive Park Drive, P.O. Box 2579
Springfield, Illinois 62708

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- 6) Item 9:

International Society of Arboriculture
P.O. Box 908
Urbana, Illinois 61801

Section 530.30 Definitions

As used in this Part, the words and terms listed shall have the meanings ascribed to them as follows:

"ANSI" - American National Standards Institute.

"Applicant" - A person applying for a permit under this Part.

"ASTM" - American Society for Testing and Materials.

"Backfill" - The methods or materials for replacing excavated material in a trench or pit.

"Bore" or "Boring" - To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

"Carrier Pipe" - The pipe enclosing the liquid, gas or slurry to be transported.

"Casing" - A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.

"Clear Zone" - The total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. Distances are specified in the AASHTO Roadside Design Guide, incorporated by reference in Section 530.20.

"Coating" - Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

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"Code" - The Illinois Highway Code (Ill. Rev. Stat. 1989, ch. 121, pars. 1-101 et seq.).

"Conductor" - Wire carrying electrical current.

"Conduit" - A casing or encasement usually for an electrical conductor.

"Control of Access" - To designate, establish and regulate existing or proposed State highways as freeways, including the acquisition of all existing, future or potential easements or rights of access, crossing, light, air or view, to, from or over such freeway right-of-way, from or to any real property abutting such freeway right-of-way.

"Conventional Highway" - State highway with minimum access control.

"Cover" - The depth of earth or backfill over buried utility pipe or conductor.

"Department" - The Illinois Department of Transportation.

"Department Approved" - The approval of the Department requires compliance with this Part. The Department's approval shall be consistent with commonly recognized and accepted traffic control and construction principles, including material selection, and with sound engineering judgment.

Unless otherwise provided in the permit or in this Part, the following Departmental publications shall serve, inclusively and not exclusively, as examples of such principles and standards:

Standard Specifications for Road and Bridge Construction
Supplemental Specifications and Recurring Special Provisions
Highway Design Manual
Highway Standards Manual
Standard Specifications for Traffic Control Items
Illinois Manual on Uniform Traffic Control Devices
Flagger's Handbook

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Work Site Protection Manual for Daylight Maintenance Operations

If the Department finds a discrepancy between differing principles, it shall determine which principles apply. If requested, the Department shall state what standard will apply to the construction, maintenance, or operation of a facility in the future.

The Department's determination will not be changed unless it finds that the determination was incorrect or that a new standard is clearly superior to the earlier standard. If the Department makes such a finding, it shall notify in writing all parties to whom it had given its earlier determination.

Requests for determinations and publications may be addressed to:

Illinois Department of Transportation
Division of Highways
Chief of the Bureau of Maintenance
2300 South Dirksen Parkway
Springfield, Illinois 62764

"Disrupt the right-of-way" - Anything that causes the right-of-way to be in a condition other than that appropriate for its intended use as a highway right-of-way. Such changes to the condition may include, but are not limited to, the following:

excavating or other cutting;
placement (whether temporary or permanent) of materials, equipment, devices, or structures;
damage to vegetation; and
compaction or loosening of the soil.

"District" - Any one of the nine administrative subdivisions of the Department's Division of Highways (see Section 530. Illustration A).

"District Engineer" - The Chief Executive Officer of a District.

"Encasement" - Provision of a protective casing.

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"Expanding Areas" - Areas where plans for commercial or residential development are being contemplated.

"Extra Heavy Pipe" - Pipe meeting ASTM standards for this pipe designation.

"Facility" - All structures, devices, objects, and materials (including track and rails, wires, ducts, fibre optic cable, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) owned or operated by permittees on State highway rights-of-way under this Part. This term also refers to those things for which a permittee may be responsible notwithstanding a claim of abandonment.

"Frontage Road" - Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access on highway.

"Fully Access-controlled Highways" - State highways which have been designated, established and are regulated as freeways to which access is never permitted, excepting only by way of grade separated intersections with selected roads and streets. Federal Aid Interstate and Defense Highways, Chicago Area Expressways, Supplemental Freeways and those primary highways constructed to freeway standards are included in the category of Fully Access-controlled Highways.

"Highways" - Rural or urban roads or streets, right-of-way, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic under the jurisdiction of the Department. This term includes all of the right-of-way, including structures, ditches and embankments.

"ILCC" - Illinois Commerce Commission.

"Immediate" or "Immediately" - That which is done within a period of time specified by the Department. If no time period is specified, the time period shall be two hours.

"Jacking" - Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

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"Jetting" - Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

"Joint Use" - The use of pole lines, trenches or other facilities by two or more utilities.

"Occupancy" - The presence of utility facilities on, over or under highway right-of-way.

"Overlook" - A roadside turnout for motorists to safely enjoy a scenic panorama.

"Owner Corporation" - The company or corporate entity that owns or operates a utility.

"Pavement Cut" - The removal of an area of highway pavement for access to an underground utility installation.

"Permit" - Formal authorization by the Department to construct and maintain utility facilities on State highway right-of-way.

"Permittee" - That entity which has a permit issued pursuant to Section 9-113 of the Code.

"Pressure" - The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

"Prompt" - See "Timely."

"Public Entity" - A legal entity that constitutes or is part of the government, whether at local, state or federal level.

"Rest Area" - A roadside area or park for motorists to rest and relax in the interest of highway safety.

"Restoration" - The repair of an area or highway facility disrupted by the construction, maintenance or repair of a utility.

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"Right-of-Way" - Land owned as an easement or in fee devoted to highway purposes. Although a utility may have its own right-of-way, this term is used in this Part to designate the real estate on which a highway is located.

"Roadway Structure" - That part of the highway that includes the pavement and shoulders.

"Scenic Easement" - A right or inferred right in land abutting a State highway which has been acquired to preserve roadside environment having aesthetic or historical features.

"Shoulder" - A width of roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

"Sound Engineering Judgment" - A decision(s) based on expertise and knowledge of engineering principles, practices and experience.

"Spur Track" - When track and rails on one side of a State highway are connected to a customer on the other side of that highway, the connecting track and rails shall be known, for the purposes of this Part, as "spur track."

"Timely" - That which is done within a period of time specified by the Department. If no time period is specified, the period shall be 30 days.

"Travel Lane" - A portion of the paved area of the roadway having a definite width allowing for the movement of a legal width vehicle.

"Trench" - A relatively narrow open excavation for the installation of an underground utility element.

"Utility" - A privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage or any other similar commodity, including any fire or police signal system

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or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

"Vent" - A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

"Wet Boring" - Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.

Section 530.40 Legal Obligations

- a) Only a permit issued by the Department under this Part will satisfy the "written consent" requirement of Section 9-113 of the Illinois Highway Code (the Code).
- b) A permit from the Department grants a license only to undertake certain activities in accordance with this Part on a State right-of-way, and does not create a property right or grant authority to the permittee to impinge on the rights of others who may have an interest in the right-of-way. Such others might include an owner of an underlying fee simple interest if the right-of-way is owned as an easement, an owner of an easement, or another permittee.
- c) It shall be the responsibility of the permittee to ascertain the presence and location of existing above-ground or underground facilities on the highway right-of-way to be occupied by their proposed facilities. The Department will make its permit records available to a permittee for the purpose of identifying possible facilities. When notified of an excavation or when requested by the Department, a permittee shall locate, physically mark, and indicate the depth of its underground facilities within 48 hours, excluding weekends and holidays.
- d) The permittee shall avoid conflicts with any existing underground or above-ground facilities on or near the highway right-of-way.
- e) The permittee shall comply with all other applicable laws relating to the placement of utility lines.
- f) The issuance of a utility permit by the Department does not excuse the permittee from complying with other

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requirements of the Department (e.g., oversize and overweight vehicles) or the requirements of other State agencies including, but not limited to, the following:

Illinois Commerce Commission
Illinois Department of Agriculture
Illinois Department of Conservation
Illinois Department of Mines and Minerals
Illinois Environmental Protection Agency
Illinois Historic Preservation Agency

g) Rights of abutting and underlying property owners are protected by common law and Sections 9-113 and 9-127 of the Code. The Department will not be a party in any negotiations between the utility and abutting property owners.

h) In no case shall the permit give or be construed to give an entity any easement, leasehold or other property interest of any kind in, upon, under, above or along the State highway right-of-way.

i) Each person responsible for a utility, in place on the effective date of this Part, on a State highway right-of-way shall notify the Department in writing, if that facility does not comply with this Part. The Department shall treat such a notice as a request for a variance under Section 530.130. Until informed that a variance will not be granted, a person responsible for a pre-existing utility will not be in violation of this Part. The failure to provide such notice constitutes a violation of this Part and of the utility accommodation permit (if any) and would justify the imposition of the sanctions set forth in Section 530.810.

Section 530.50 Indemnification and Insurance

- a) The permittee shall release, defend, indemnify, and hold the State, its employees, and its contractors harmless from all claims for injuries and damages to persons or property (including that of the permittee) relating to the installation, maintenance, relocation, presence, use or removal of the facility.
- b) Each District shall determine whether a permittee must provide liability insurance. When making its determination, the District shall consider all relevant factors including, but not limited to, the following:

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- 1) The potential for harm to highway users or other parties that might make a claim against the Department.
- 2) The ability of the permittee, without insurance, to satisfy a claim against the Department.
- c) Any insurance policy (or amendment or rider thereto) required by this Section shall contain the following provisions:
 - 1) The Department, its employees, and its agents must be included as named insureds.
 - 2) The Department will be notified at least 30 days prior to the termination or modification of the coverage.
 - 3) The amount of coverage must be sufficient to protect the Department (including its employees and agents) from estimated projected claims.

Section 530.60 Utility Permits To Public Entities

a) General

A Utility Permit issued to a public entity shall be executed by an officer authorized to do so by the elected governing body. The executed Permit shall have an attached certification that the signature and commitments were authorized by "Resolution" of the elected governing body.

b) Municipalities, Counties, Townships and other local units of government

Occupation or crossing of State Highway right-of-way by utility installations owned by a local unit of government are subject to all of the requirements of this Part except the surety bonding requirement.

c) Sanitary Districts, Water Districts, Levee Districts and other public Entities

Occupation or crossing of State Highway right-of-way by utility installations of a sanitary district, a water district, levee district or any public entity are subject to all of the requirements of this Part.

d) Other State Agencies

Occupation or crossing of State Highway right-of-way by State agency-owned utility installations are subject to all of the requirements of this Part except the surety bonding requirement.

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SUBPART B: PERMIT APPLICATION REQUIREMENTS

Section 530.100 Permit Application

- a) The permit application shall be in a form prescribed by the Department. Upon request, forms will be supplied by the Department. The application shall require the applicant to provide specific information necessary for the Department to determine whether a permit should be issued. As a minimum, the following information shall be provided:
 - 1) Name of applicant.
 - 2) Legal status of applicant, such as an individual, joint venture, partnership, incorporation, or governmental unit.
 - 3) Address, zip code, and telephone number of the applicant.
 - 4) Proposed use of highway (describe what applicant wants to do), including location, physical description, and type of materials to be used. Scale drawings are preferred.
 - 5) Time schedule for initiation and completion of various steps of the work proposed.
- b) If required (see Section 530.270 "Requirement for a Surety Bond"), the permit application will be accompanied by a surety bond (photocopy of continuing bond is acceptable) that includes the Department as an additional named insured guaranteeing that the proposed work will comply with the terms of the permit, that the applicant will reimburse any injured party for damages relating to the permitted work, and that the applicant will remove or modify the permitted facility in a timely manner if required to do so by the Department or its successor.
- c) The applicant shall show either:
 - 1) compliance with other State agencies, or
 - 2) that the regulations of no other State agencies are relevant to what has been proposed by the applicant.
- d) Applications for gas pipeline permits shall state the proposed pipe size, design, construction class and operating pressures.
- e) Applications should be submitted to the Department at the Highway District Office responsible for the area of the permit. Applications involving more than one District should be submitted to:

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Illinois Department of Transportation
Bureau of Maintenance, Services Section
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217)782-7228

A map showing the areas covered by the nine Highway District Offices and the addresses of those offices is included at Section 530. Illustration A.

Section 530.110 Emergency Contingency Plans

- a) Each applicant, who can anticipate emergency situations that may require an immediate response, shall include an emergency contingency plan with the permit application. This emergency contingency plan shall specify the nature of potential emergencies and the intended response by the applicant. The intended response shall include notification of the Department and protection of the safety and convenience of the highway users.
- b) Compliance with ILCC regulations for emergency contingency plans constitutes compliance with this Section unless the Department finds that additional information or assurances are needed.

Section 530.120 Fees or Assessments

- a) The Department charges no fees for the administration of the utility occupancy policy for conventional highways.
- b) Compensation, based upon an appraisal by the Department of the fair market value of an easement or leasehold for such use of the highway right-of-way, will be charged for longitudinal utility accommodations located upon, under, or along fully access-controlled highways. Such compensation may include in-kind compensation. All fees may be reviewed once every five years and may be adjusted by the Department based on changes in the fair market value for the use of the highway right-of-way. The Department will charge reimbursement fees for engineering, legal, and other expenses incurred in evaluating applications and in establishing such compensation.
- c) Charges will also be assessed for the attachment of utility facilities to bridge structures.

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- 1) Assessment charges for utility attachments to highway structures are not intended to produce revenue. The charges are assessed to cover the cost of the engineering analysis required and as compensation for the addition of weight that reduces the available live-load capacity of existing bridges and enters into the cost of proposed new bridges.
- 2) The assessment charge for utility attachment is based on the ratio of the weight of the proposed utility elements to the live-load for which the structure was or will be designed. The factor arrived at from the foregoing ratio is applied against the cost of the load-bearing elements of the structure, including piers or abutments.
- 3) The minimum charge for any utility attachment to a highway structure will be \$300.

Section 530.130 Variances

- a) Request for Variance
Requests for utility occupancies that would not conform to this Part will be considered individually. Variance from this Part may be granted where terrain features or other conditions such as an irregular right-of-way line make compliance impractical or unreasonable. A variance will not be granted when such action may tend to diminish the value of the highway to the traveling public or to disadvantage unduly other (including future) utility use.
- b) Existing Installations that met standards in force at the time of installation will be granted variances.
- c) Review of Variances by Federal Highway Administration
This Part has the approval of the Regional Administrator of the Federal Highway Administration insofar as federally-aided highways are concerned. However, any proposed utility installation on federally-aided highways that is not in compliance with the general provisions of this Part and permits involving longitudinal installations of private lines, are subject to review by the Federal Highway Administration.
- d) Other variances. A variance from any other provision of this Part shall be granted if it is proved that no harm, cost, or inconvenience will result to the

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Department, any highways under its jurisdiction, or the users of those highways.

Section 530.140 Access of Freeway Right-of-Way

Access from the through travel lanes or ramps on fully access-controlled highways will not be permitted for installing or servicing of utility facilities except as provided in the AASHTO publication titled "A Policy on the Accommodation of Utilities within Freeway Right-of-Way" incorporated by reference at Section 530.20.

Section 530.150 Suitability of Materials

Only Department approved, as defined in Section 530.30, materials shall be used in utility installations in the right-of-way of the State Highway System.

SUBPART C: GENERAL PERMIT CONDITIONS

Section 530.200 Obligation to Comply

Every permittee shall comply with the terms and conditions of the permit unless authorized, in writing by the Department, to do otherwise. The terms and conditions shall include those requirements set forth in this Part. Specific conditions are listed in Subpart D.

Section 530.210 Application Provision

Statements and schematics in the application are material conditions of the permit.

Section 530.220 Departmental Standards

- a) The permittee shall operate in a Department approved, as defined in Section 530.30, manner for traffic control, for use of the right-of-way, and for cleanup and restoration in a timely manner in accordance with Sections 530.240 and 530.250.
- b) The Department's standards may be communicated in either written or spoken directives. A spoken directive shall be followed by a consistent written confirmation within 15 calendar days.

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Section 530.225 Release and Indemnification

In consideration of the granting of the license, represented by the permit, to use State property, the Permittee, by use and as a condition of the permit, agrees to release and forever discharge the State of Illinois, its officers, agents and employees, from any and all actions, courses of action, claims and demands for, upon or by reason of any damage, loss or injury to its facilities and equipment placed or brought onto State property pursuant to or on account of the permit. Further, the Permittee agrees to indemnify, defend, and hold the Department harmless from all claims by persons adversely affected by the Department's removal, relocation, or modification of the permitted facility pursuant to Section 530.310 and by damage to facilities which have not been placed in the area specified by the permit.

Section 530.230 Location of Facilities

- a) All utility installations shall be located as follows:
- 1) Longitudinal utilities shall be located as near the right-of-way line as practicable and not more than eight feet from and parallel to the right-of-way line.
 - 2) No new above-ground utility facilities shall be located in the area established as clear zone for that particular section of highway.
 - 3) No new longitudinal utility installations will be permitted under paved longitudinal portions of streets or highways under Department jurisdiction; however, new cables will be allowed in existing ducts if they can be installed without disrupting the pavement.
 - 4) Utility crossing facilities installed between the ditch lines or curb lines of State highways shall be designed and constructed and shall incorporate materials and protective appurtenances so as to virtually preclude future disruption in these areas. Protection may include encasement, additional cover, or other measures that might not be required outside the areas.
 - 5) Utilities will not be permitted to cross under State highways, in cattle passes, culverts or other drainage facilities.
 - 6) Manholes will not be permitted in the traffic lanes or shoulders of State highways. Existing

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- manholes may be permitted to remain.
- 7) Bridges or tunnels to carry utilities other than railroads or public utilities, over or under State highways, shall be considered as a use of "air rights" and shall be processed on federally aided highways as prescribed in Federal-Aid Highway Program Manual Volume 7, Chapter 4, Section 3. The same provisions shall apply to non-federally aided State highways except the approval of FHWA will not be a requirement.
 - 8) Utility crossings shall be at or as near as practicable to a 90 degree angle with the highway centerline.
 - 9) No utility appurtenances such as pumping stations and transformers serving a longitudinal facility will be allowed in interchanges.
 - 10) The inability to locate a longitudinal facility within the prescribed distance from the right-of-way line may be grounds for denial.
- b) Installations not conforming with subsection (a) will require the granting of a variance by the Department.

Section 530.240 Traffic Control

- a) The permittee is responsible for providing and installing warning signs, protective devices and flaggers as specified in the permit to provide protection of the traveling public and the utility's workers when on the right-of-way.
- b) In the event that the traffic protection requirements are not contained in the permit, the permittee shall provide proper traffic control and protection in a safe and convenient manner which shall be Department approved as defined in Section 530.30.
- c) Flaggers shall control traffic in a safe and convenient manner that is Department approved as defined in Section 530.30.

Section 530.250 Cleanup and Restoration

The right-of-way shall be returned to a condition which is at least as good as it was before the permitted work took place, in a timely manner. This includes restoration of entrances and side roads. Restoration of roadway surfaces will be made using Department approved materials and methods (see Section 530.30 "Department Approved").

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Section 530.260 Scenic Restrictions

- a) Special restrictions on utility occupancy may be imposed where visual quality is an important consideration; for example, scenic easements, rest areas, public parks, overlooks, and recreation areas.
- b) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.
- c) Aerial installations may be permitted only when:
 - 1) other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality;
 - 2) placement underground is not technically feasible or is unreasonably costly; and
 - 3) the proposed installation will be made at a location, and will employ suitable design and materials, which give the greatest weight to the aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

Section 530.270 Requirement for a Surety Bond

Surety bonds in the amount prescribed in Section 530.280 will be required for:

- a) Individual utilities whose assets are less than \$500,000. A copy of the utility's latest annual report indicating assets of at least \$500,000 may be submitted in lieu of a bond.
- b) Individual utilities with previously poor performance record. Types of poor performance include a history of using inferior methods and materials, poor maintenance of utility appurtenances and failing to comply with Department directives (which have not been nullified by a court of competent jurisdiction) or conditions of other utility permits.
- c) Individual utility contractors with previously poor performance record. (See subsection (b).)
- d) Variances to this Part. (See Section 530.130, "Variances".)

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Section 530.275 Surety Bond

- a) If required, the permittee shall furnish a surety bond on a form approved, and in an amount specified, by the Department.
- b) General
 - 1) The surety bonds required for utility work and occupancy on State highway right-of-way are intended primarily to assure the prompt and satisfactory replacement, repair, and completion of work (at no cost to the State or its contractors) on State highway facilities that may be damaged or disrupted by the utility company's operations or occupancy. These bonds are not to be considered as personal injury and property damage insurance.
 - 2) A surety bond remains in effect until released by the Department.
 - 3) The monetary value of the surety shall be based on the potential for highway facility damages which may be related to the type and volume of transmittant, the physical dimensions of the utility facilities, and the permittee's history of noncompliance.
 - 4) The Department will accept bonds from only those sureties that meet the Department's standards for acceptability as set forth in 44 Ill. Adm. Code 675.240.
 - 5) The bonding company shall commit itself to notify the Department of its intention to terminate the bond at least 30 days before termination. The permittee shall provide a substitute surety bond acceptable to the Department within 15 days after its surety gives a termination notice or shall remove its facility from, and restore, the right-of-way within that period of time.
- c) Utility Permit Continuing Bond

Surety shall be provided as a continuing bond to remain in full force and effect for all utility companies issued a general utility permit providing for long-term or permanent occupancy of State highway right-of-way.
- d) Individual Utility Permit Bond

Surety shall be provided by a contractor who constructs or maintains utility facilities, under permit, for a municipality or other public body which is not required to maintain a continuing bond. Individual utility

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permit bonds are to remain in full force and effect until the specific project is completed and the highway right-of-way is restored in accordance with Section 530.250. As a minimum, Individual Utility Permit Bonds remain in full force and effect for five years from date of permit approval by the Department.

- e) Continuing Bond for Utility Contractors
A contractor who has occasion to frequently request permits for utility work may provide, at its option, a continuing bond. This arrangement eliminates the need for the contractor to secure an individual utility permit bond for each project.
- f) If the surety bond expires, the permit can be revoked.

AGENCY NOTE: Forms mentioned in this Part are available from District offices as shown in Section 530. Illustration A or the Department of Transportation, Bureau of Maintenance, 2300 South Dirksen Parkway, Springfield, Illinois, 62764.

Section 530.280 Surety Bond Coverage

- a) The amount of Surety Bond required for utility work and occupancy will be based on:
 - 1) the potential for damage to the highway;
 - 2) the number of work crews that could potentially be active at a given time;
 - 3) local conditions; and
 - 4) the work record of the utility company or contractor.
- b) Each bond shall be for an amount which will guarantee full compliance with the permit, including the following:
 - 1) proper installation;
 - 2) proper maintenance; and
 - 3) relocation, modification, and removal upon demand of the Department.

Section 530.290 Maintenance

- a) The Department shall be notified in writing and must give its permission before a permittee undertakes repairs of its facility in the right-of-way.
- b) Utility facilities on State highway right-of-way are to be maintained, by or for the owner corporation, at the owner corporation's expense.
- c) Emergency Maintenance Procedures
Emergencies that require immediate attention or repair

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of a utility installation may preclude following normal procedures for securing a working permit, but the permittee must file in writing with the Department a description of the repairs undertaken in the right-of-way within 48 hours after the emergency repair.

- 1) Emergency maintenance in relation to utility installations on the interstate and conventional highway system will be considered as any immediate maintenance required to the utility installation for the safety of the traveling public or immediate maintenance required for the health and safety of the general public served by the utility.
- 2) If an emergency creates a hazard on the traveled portion of the roadway, immediate steps shall be taken by the utility company to provide all necessary protection for traffic on the highway including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of equipment required in repair operations, signs and lights shall be provided. Parking on the interstate shoulder in an emergency will only be permitted when no other means of access to the utility installation is available.
- 3) In an emergency, the utility company shall immediately notify the appropriate District Engineer or authorized agent of the emergency, informing the District Engineer as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the State Police, as well as the District Engineer, shall be notified immediately.
- 4) In an emergency, the utility company shall complete repairs as soon as possible and with the least inconvenience to the traveling public.

Section 530.300 As-Built Plans

If the permitted facility is not placed as shown in the application, the permittee shall submit a set of as-built plans to the Department's District Office within 90 days after the completion of the permitted work. If as-built plans deviate from the permit, such deviation shall be identified and shall be treated as a request for variance in accordance with Section

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530.130. If the Department does not reject the as-built plans within 90 days after their receipt, they will be considered approved. If the Department disapproves the as-built plans, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit.

Section 530.310 Obligation to Remove, Relocate, or Modify

- a) The permittee shall remove, relocate, or otherwise modify its facility, including the removal of bridge attachments, as specified by Section 9-113 of the Code when required to do so in accordance with Sections 530.810, 530.820 and 530.830. Section 9-113 of the Code, gives sole authority to the Department, and no other administrative agency or commission may review or overrule a permit-related decision or direction of the Department. The failure of a permittee to comply with the directions of the Department may cause the sanctions, set forth in Subpart H, to be imposed on it. The Department may also give written notice that the permittee shall remove, relocate, or otherwise modify its facility.
 - 1) If, within 60 days after receipt of such written notice, satisfactory arrangements are not made, the Department may undertake the requested actions itself and may bill the permittee for the total cost thereof.
 - 2) Notice shall be considered to have been received if:
 - A) Either the Department receives from the U.S. Postal Service a signed return receipt or a notice that the permittee has refused to accept a notice by mail, or
 - B) The Department obtains such other reliable evidence of receipt as it may find to be appropriate. For example, the receipt of a hand-delivered notice might be evidenced by a statement by the messenger that the notice was delivered. A receipt from an express message service would also suffice.
 - 3) If notice of receipt is not received within 10 days or the Department receives a notice of undeliverability, the notice shall be posted as a sign in a conspicuous place in the area of the permit. If, within 60 days after posting of such written notice as a sign, satisfactory

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arrangements are not made, the Department may undertake the requested actions itself and may bill the permittee for the total cost thereof.

- c) The Permittee, by use of its permit, agrees to the following:
 - 1) To pay the Department's costs incurred under this Section.
 - 2) If the full amount of the bill is not paid by the date specified on the billing statement, to pay all costs of collection, including attorneys' fees, litigation expenses, and fees (including contingency and percentage fees) paid to collection agencies, and
 - 3) That any attorney at law is authorized, on behalf of permittee, to do the following:
 - A) appear before any court of competent jurisdiction in Illinois, upon complaint made by the Department, and enter permittee's appearance;
 - B) waive process and service;
 - C) confess judgment for the full amount billed under this Section, for all attorneys' fees and costs incurred by the State of Illinois associated with attempt(s) to collect the amount billed under this Section;
 - D) accept the release and indemnification provisions stated in Section 530.225 of this Part;
 - E) waive all errors and all right of appeal from said judgment(s); and
 - F) provide such other consents or cooperation as may be helpful to complete the collection process so that the Department may be fully paid.

Section 530.320 Apportionment of Costs

There may be times when the Department will incur delay or other costs, including third party claims, because the permittee will not or cannot perform its duties under its permit and this Part. Unless the permittee shows that another allocation of the cost of undertaking the requested action is appropriate, the permittee shall bear the Department's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility which is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the Department. The sanctions set forth in Subpart H may be imposed on a permittee

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who does not pay the costs apportioned to it.

Section 530.330 Design of Facilities

Capacity for foreseeable future expansion needs shall be provided in initial installations.

SUBPART D: SPECIFIC PERMIT CONDITIONS

Section 530.400 Underground Facilities - Power and Communication Lines

a) General

- 1) Longitudinal lines shall be located as near the right-of-way line as practicable and no more than eight feet from and parallel to the right-of-way line.
- 2) Installation shall have a minimum cover of 30 inches except communication lines installed by the plowed method shall have a minimum cover of 24 inches.
- 3) Underground power cables must be grounded in accordance with the National Electrical Safety Code (ANSI C2-1990).

b) Fully Access Controlled Highways

- 1) Longitudinal Lines
 - A) New underground power and communications lines longitudinal to the centerline will not be permitted within the access-control lines of fully access-controlled highways under the following conditions:
 - i) When the installation of the utility would require pavement cuts.
 - ii) When non-emergency repairs of the utility would require the use of any part of the highway.
 - iii) When the installation of the utility would endanger or impair other utility facilities already in place.
 - iv) When the installation of the utility would be above-ground after installation.
 - v) When the utility would interfere with or impair the present use or future expansion of the highway.
- B) When new underground power and communications lines are to be permitted longitudinally to

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the centerline of fully access-controlled State highways, the following conditions will apply:

- i) No above-ground appurtenances will be allowed on State highway right-of-way.
- ii) No utility facilities will be allowed between the edge of pavement and the back of abutment of the intersecting roadway at grade separation structures.
- iii) Bridge attachments may be allowed as specified in Subpart G.

2) Underground Crossings

Underground power and communication lines will be permitted to cross fully access-controlled highways under the following conditions:

- A) The crossing provides a transmission or distribution service to a general area or an expanding area. No individual service crossings will be permitted to cross a fully access-controlled highway except in cases involving isolated locations such as landlocked areas.
- B) The design, materials and construction methods shall be those that can be expected to provide maximum maintenance-free service life.
- C) Encasement shall be provided between jacking or bore pits, if the crossing is installed by boring or jacking.
- D) Encasement may be eliminated under the following conditions:
 - i) The crossing is installed by the use of "moles", "whip augers" or other approved methods which compress the earth to make the opening for cable installation.
 - ii) The installation is by the open trench method. This method is only permitted prior to roadway construction.
- E) Above-ground mounted appurtenances to electric power or communication lines within the access-control lines of fully access controlled highways will normally not be permitted except in cases of extreme need. Where installations are approved, they shall be located within one foot of the right-of-way line or as near as practicable.

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- c) Conventional Highways
- 1) Longitudinal Lines
Underground power and communication lines may be permitted longitudinal to the centerline of conventional State highways under the following conditions:
 - A) Cable may be installed by trenching or plowing with consideration given to boring to minimizing the damages when crossing improved entrances and side roads.
 - B) Above-ground appurtenances constructed as component parts of underground communication or electric power lines shall be located within one foot of the right-of-way line or as near as practicable.
 - 2) Underground Crossings
Underground power and communication lines will be permitted to cross conventional highways under the following conditions:
 - A) The design materials and construction methods shall be those that can be expected to provide maximum maintenance-free service life.
 - B) Encasement shall be provided between jacking or bore pits, if the crossing is installed by boring or jacking.
 - C) Encasement may be eliminated under the following conditions:
 - i) The crossing is installed by the use of "moles," "whip augers" or other approved methods which compress the earth to make the opening for cable installation.
 - ii) The installation is by the open trench method. This method is only permitted prior to roadway construction.

Section 530.410 Underground Facilities - Gas Transmission Lines

- a) General
- 1) Gas pipelines shall be constructed, maintained, and operated in a Department approved, as defined in Section 530.30, manner and in conformance with "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards" incorporated by reference at Section 530.20.
 - 2) Crossing installations by open trench will be permitted only prior to roadway construction with

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- vented encasement provided between ultimate ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway.
- 3) Gas pipeline crossings shall have a minimum cover of 30 inches at all locations on right-of-way, including below design ditch elevation even if the ditch is higher than design elevation.
 - b) Fully Access-controlled Highways
 - 1) Longitudinal Gas Pipelines:
New longitudinal gas pipelines will not be permitted within the access-control lines of fully access-controlled highways. Existing longitudinal gas pipelines may be permitted to remain if they can be serviced without access from the through-travel lanes, shoulders, or ramps of the fully access-controlled highway.
 - 2) Gas Pipeline Crossings:
Gas transmission and distribution lines may be permitted to cross fully access-controlled highways under the following conditions:
 - A) The crossing provides a transmission or distribution service to a general area or an expanding area. No individual service lines will be permitted to cross a fully access-controlled highway except in cases of extreme hardship involving critical needs and isolated locations.
 - B) The design, materials and construction methods shall be those that can be expected to provide maximum maintenance-free service life.
 - C) Crossings under completed highway projects shall be installed by jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway. The crossing may be installed using tunneling with vented encasement but only when the installation is not possible by other means. When tunneling, the venting of the encasement shall extend to within one foot of the

- right-of-way line. Crossings may also be installed by the use of "moles," "whip augers" or other approved methods which compress the earth to make the opening for pipe.
- D) Encasement may be eliminated under the following conditions:
- extra heavy pipe is used; and
 - cathodic protection of the pipe is provided.
- E) If encasement is eliminated, maintenance of damaged or decayed pipe may not disrupt the right-of-way. (See Section 530.30 "Disrupt the right-of-way")
- F) Locations shall be avoided where rock excavation or deep cuts would make crossings with proper cover impractical.
- G) The locations of the crossing pipe shall be marked at the right-of-way line with markers that identify the utility and provide emergency telephone numbers.
- c) Conventional Highways
- Longitudinal Gas Pipelines:
 - Gas pipelines for transmission, distribution, and service may be permitted longitudinal to the centerline of conventional State highways if the materials, construction methods, and other elements are in conformance with the provisions of this Part.
 - Longitudinal gas transmission lines shall be located as near the right-of-way line as practicable and not more than eight feet from and parallel to the right-of-way line.
 - Gas Pipeline Crossings:

Gas pipelines for transmission, distribution, and service may be permitted to cross conventional State highways under the following conditions:

 - Crossings of over 60 psig shall be installed by jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway. The crossing may be installed using tunneling with vented encasement, but only when the installation is

- not possible by other means. When tunneling, the venting of the encasement shall extend within one foot of the right-of-way line. Crossings may also be installed by the use of "moles," "whip augers" or other approved methods which compress the earth to make the opening for the pipe.
- B) Encasement will not be required for crossings of 60 psig or less.
- C) Encasement may be eliminated under the following conditions:
- extra heavy pipe is used; and
 - cathodic protection of the pipe is provided.
- D) If encasement is eliminated, maintenance of damaged or decayed pipe may not disrupt the right-of-way. (See Section 530.30 "Disrupt the right-of-way")
- E) The locations of the crossing pipe for transmission and distribution lines shall be marked at the right-of-way line with markers that identify the utility and provide emergency telephone numbers. In urban areas, the markers for transmission and distribution lines may be eliminated as provided in current Federal regulations. (See 49 CFR 192.707 (1989))
- F) In built-up or expanding areas, frequent service crossings are discouraged in favor of establishing distribution on both sides of the highway. The Department reserves the right to reject permits involving frequent service crossings.

Section 530.420 Underground Facilities - Petroleum Products Pipelines

- a) General
- Petroleum products pipelines are those carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry. Petroleum products pipelines are, with few exceptions, transmission lines delivering products to processing or distribution facilities. Petroleum products pipelines installed on State highway right-of-way shall conform to the applicable sections of ANSI Standard Code for

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Pressure Piping which is incorporated by reference in Section 530.20. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).

- 2) Crossing installation by open trench will be permitted only prior to roadway construction with vented encasement provided between ultimate ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway.
- 3) Encasement may be eliminated under the following conditions:
 - A) extra heavy pipe is used; and
 - B) cathodic protection of the pipe is provided.
- 4) If encasement is eliminated, maintenance of damaged or decayed pipe may not disrupt the right-of-way. (See Section 530.30 "Disrupt the right-of-way")
- 5) The location of petroleum products pipeline crossings shall be marked at the right-of-way lines with markers that identify the utility and provide emergency telephone numbers in accordance with current Federal regulations. (See 49 CFR 192.707 (1989))

b) Fully Access-controlled Highways

- 1) Longitudinal Petroleum Products Pipelines
New longitudinal petroleum products pipelines will not be permitted within the access-control lines of fully access-controlled State highways. Existing longitudinal installations shall be relocated if they cannot be serviced except from through travel lanes, shoulders, or ramps of the highway. Longitudinal petroleum products pipelines may be permitted outside the access-control lines where frontage roads or other corridors provide access for servicing the facilities.
- 2) Petroleum Products Pipeline Crossings
Petroleum products pipelines may be permitted to cross fully access-controlled highways under the following conditions:
 - A) The design, construction methods and materials shall be those that can be expected to provide maximum maintenance-free service life.
 - B) Crossing of completed highway projects shall be installed by jacking or boring with vented

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encasement provided between the ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway. The crossing may be installed using tunneling with vented encasement, but only when the installation is not possible by other means. When tunneling, the venting of the encasement shall extend to within one foot of the right-of-way line.

- C) Locations shall be avoided where rock excavation or deep cuts would make crossings with proper cover impractical.
- c) Conventional Highways
 - 1) Longitudinal Petroleum Products Pipelines
 - A) Longitudinal petroleum products pipelines may be permitted on conventional State highways if the materials, construction methods and other elements are in conformance with the provisions of this Part.
 - B) Longitudinal petroleum products pipelines shall be located as near the right-of-way line as practicable and not more than eight feet from and parallel to the right-of-way line.
 - 2) Petroleum Products Pipeline Crossings
Petroleum products pipeline crossings may be permitted to cross conventional highways under the following conditions:
 - A) The materials, construction methods and other elements are in conformance with this Part.
 - B) Crossings shall be installed by jacking or boring under completed highway projects with vented encasement provided between ditch lines or toes of slopes of the highway as a minimum or as directed by the engineer. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of highway. The crossing may be installed using tunneling with vented encasement, but only when the installation is not possible by other means. When tunneling, the venting of the encasement shall be within one foot of the right-of-way line.

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Section 530.430 Underground Facilities - Waterlines

- a) General
- 1) Waterlines generally are those pipelines carrying potable water. Permit applications for waterlines shall indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied. Waterlines shall be installed to meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois" which is incorporated by reference in Section 530.20.
 - 2) Water main cover shall be sufficient to provide freeze protection and shall be maintained at a minimum of three feet.
 - 3) Encasement may be omitted if pipe is installed prior to highway construction and continuous or restrained joint carrier pipe is used. Bell and spigot type shall be encased regardless of installation method.
 - 4) Longitudinal lines shall be located as near the right-of-way line as practicable and no more than eight feet from and parallel to the right-of-way line.
 - 5) Ground-mounted appurtenances to waterlines shall be located within one foot of the right-of-way line or as near as practicable.
- b) Fully Access-controlled Highways
- 1) Longitudinal Water Mains
New longitudinal water mains will not be permitted between the access-control lines of fully access-controlled highways. Existing longitudinal installations shall be relocated if they cannot be serviced except from through-travel lanes, shoulders, or ramps of the highway. Longitudinal water mains may be permitted outside the access-control lines of fully access-controlled highways if frontage roads or other corridors provide access for servicing the lines.
 - 2) Water Main Crossings
Water main crossings of fully access-controlled highways may be permitted under the following conditions.
 - A) The design, construction methods and materials shall be those that can be expected to provide maximum maintenance-free service.

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- B) Crossing of completed highway projects shall be installed by jacking or boring with encasement provided between jacking or bore pits.
 - C) Crossing shall provide water service to a general or expanding area.
 - D) Individual service crossings under fully access-controlled highways will not be permitted except involving isolated locations such as landlocked areas.
- c) Conventional Highways
- 1) Longitudinal Water Mains
Longitudinal water mains may be permitted on the right-of-way of conventional highways if they conform to the general provisions of this Section.
 - 2) Water Main and Service Crossings
Water main and service crossings of conventional State highways may be permitted under the following conditions:
 - A) The crossings shall be installed by jacking or boring under completed highway projects.
 - B) Encasement shall be furnished between bore pits unless continuous pipe or Department approved jointed pipe is used under the roadway structure (see Section 530.30, "Department Approved").

Section 530.440 Underground Facilities - Sewer Lines and Drainage Lines

- a) General
- 1) Sanitary sewers and storm sewers other than those installed only for highway drainage shall be regulated by this Part. Drainage piping owned and operated by an organized drainage district, sanitary district, municipality, or individual is regulated by this Part.
 - 2) Permit applications for sewerline installations shall indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control, have been satisfied. Sewer lines shall be installed to meet or exceed the recommendations of the current "Standard Specifications for Water and Sewer Main Construction in Illinois," which is incorporated by reference in Section 530.20.
 - 3) Sewer and drain lines shall have minimum cover of

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- 30 inches with cover sufficient for freeze protection.
- 4) Longitudinal lines shall be located as near the right-of-way line as practicable and no more than eight feet from and parallel to the right-of-way line.
 - 5) Storm sewers, sanitary sewers, or drainage lines may be permitted to cross highways under the following conditions:
 - A) The design, construction methods and materials shall be those that can be expected to provide maximum maintenance-free service life.
 - B) Casing may be omitted for crossings installed by open trench method prior to highway construction if the sewer system is unpressurized or if Department approved continuous pipe or Department approved jointed pipe is used (See Section 530.30 "Department Approved"). Such uncased installation shall preclude future repair or maintenance under the roadway structure.
 - C) Crossings of completed highway projects shall be installed by jacking or boring with encasement provided between bore or jacking pits.
 - b) Fully Access-controlled Highways

New longitudinal storm sewers, sanitary sewers, or drainage lines that are not a part of the highway facilities will not be permitted between the access-control lines of fully access-controlled highways. Existing longitudinal sewage or drainage systems may be permitted to remain if they can be serviced without access from the through-travel lanes, shoulders, or ramps of the highway.
 - c) Conventional Highways

Longitudinal sewer and drain lines may be permitted on conventional State highways if they conform to the general provisions of this Section.

Section 530.450 Above-Ground Facilities - Power and Communication Lines

- a) General

An application for a permit for a new power or communication installation system shall include evidence, if required, that a "Certificate of Public

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Convenience and Necessity" has been issued by the Illinois Commerce Commission. Electric power or communications installations on State highway right-of-way shall be constructed, operated, and maintained in conformity with the provisions of the National Electrical Safety Code and Illinois Commerce Commission's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305) except for certain vertical clearance requirements as hereinafter noted.

- 1) Ground Mounted Appurtenances

Ground mounted appurtenances shall be provided with a vegetation-free area extending one foot beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material. With the approval of the District Engineer, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground mounted appurtenances shall be painted an inconspicuous color.
- 2) Guy Wires and Brace Posts
 - A) Guys and braces will not be allowed on the right-of-way.
 - B) When a variance is allowed, in accordance with Section 530.130, guy wires shall be equipped with guy guards for maximum visibility.
- b) Fully Access-controlled Highways
 - 1) Longitudinal Lines

Longitudinal pole lines will not be permitted within the access-control lines of fully access-controlled highways except existing installations that can be serviced without access from the through traffic roadway or ramps.
 - B) Longitudinal pole lines may be permitted outside the access-control lines of fully access-controlled highways where frontage roads or other corridors provide access for servicing the installation and overhanging of the access-control line is minimal.
- 2) Overhead Crossings
 - A) Overhead crossings of power and communication lines over fully access-controlled highways shall provide a minimum vertical clearance

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over the roadway of 20 feet with additional clearances as required by Illinois Commerce Commission's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305) for higher voltage lines. Where practicable, the crossing shall span the entire right-of-way with no poles, guys, or appurtenances within the access-control lines.

B) Supporting poles shall be in compliance with the latest AASHTO "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," incorporated by reference in Section 530.20, and the minimum offset allowable to the tower or pole shall be in accordance with the clear zone as provided in the latest AASHTO Roadside Design Guide, incorporated by reference in Section 530.20.

C) Overhead crossings of interchanges that would require poles, towers, guy wires or brace posts within the interchange will normally not be permitted except in cases of extreme need. The installation shall be in compliance with the latest AASHTO "A Policy on the Accommodation of Utilities Within Freeway Right-of-Way," incorporated by reference in Section 530.20, and the minimum offset allowable to the tower or pole shall be in accordance with the clear zone as provided in the latest AASHTO Roadside Design Guide, incorporated by reference in Section 530.20.

D) Overhead crossings shall be transmission or distribution lines serving a general area or to serve a developing area. No individual service crossings will be permitted to cross a fully access-controlled highway except involving isolated locations such as landlocked areas.

c) Conventional Highways

1) Longitudinal Lines

A) Overhead power and communication lines longitudinal to the centerline of conventional State highways shall be of single pole construction located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as

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reasonable pole alignment will permit.

1) In urban areas, where pavement is curbed, poles are to be as remote as practicable from the curb with a minimum distance of 1.5 feet behind the face of the curb.

11) In urban areas, where pavement is uncurbed, poles shall be as remote from the pavement as practicable with a minimum distance of four feet outside the outer shoulder line of the roadway and not within the clear zone.

B) Joint use of poles will be required where practical.

C) No utility poles will be permitted in the ditch line of any State highway.

D) Ground-mounted appurtenances to electric power or communication lines shall be located within one foot of the right-of-way line or as near as practicable.

2) Overhead Crossings

A) Overhead power and communication lines crossing conventional highways shall have a minimum vertical line clearance over the roadway of 18 feet with additional clearances as required by Illinois Commerce Commission's rules entitled, "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305) for higher voltage lines.

B) Poles shall be located within one foot of the right-of-way of the highway and outside of the clear zone.

C) Overhead crossings at major interchanges will be discouraged.

D) In expanding areas, frequent service crossings will be discouraged in favor of requiring distribution systems on both sides of the highway.

Section 530.460 Above-Ground Facilities - Light Poles and Lighting Power Lines

a) General

1) This Section applies to poles used solely for lighting. Poles used for both lighting and transmission distribution shall meet the requirements of Section 530.450.

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- 2) Ground mounted appurtenances shall be provided with a vegetation-free area extending one foot beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material. With the approval of the District Engineer, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground mounted appurtenances shall be painted an inconspicuous color.
- 3) Guy Wires and Brace Posts
 - A) Guys and braces will not be allowed in the clear zone on the right-of-way.
 - B) When guy wires are allowed, guy wires shall be equipped with guy guards for maximum visibility.
- 4) Joint Use of Poles
 - A) Poles supporting both lights and lighting power lines shall meet the criteria for light poles except joint use of poles will not be permitted in the clear zone.
 - B) Joint use of poles will be required where practical.
- b) Light Poles
 - 1) Light poles shall be of single pole construction located as near as practicable to the right-of-way line and, where possible, in protected areas.
 - A) In urban areas, where pavement is curbed, light poles are to be as remote as practicable from the curb with a minimum distance of 1.5 feet behind the face of the curb.
 - B) In urban areas, where pavement is uncurbed, light poles shall be as remote from the pavement as practicable with a minimum distance of four feet outside the outer shoulder line of the roadway.
 - 2) No light poles will be permitted in the ditch line of any State highway.
 - 3) A light pole located in the clear zone will be breakaway unless:
 - A) It cannot be struck by errant vehicles because it is behind or on a barrier, or is protected by crash cushions which are necessary for other roadway design reasons; or
 - B) The amount of pedestrian traffic on nearby

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- pedestrian facilities is such that a breakaway support would present a greater potential hazard to the pedestrian traffic than a non-breakaway support would present to the vehicular traffic. Examples of such locations include sports stadiums and associated parking areas, tourist attractions, school zones, central business districts, and local residential neighborhoods where the speed limit is 30 miles per hour or less.
- 4) Light poles located outside the clear zone of roadways, where no pedestrian facilities exist, shall be breakaway where there is a possibility of being struck by errant vehicles.
 - c) Lighting Power Lines

Power lines serving only to provide power to lights must meet the same criteria as power and communication lines. (See Section 530.450)

Section 530.470 Above-Ground Facilities - Other Utilities

Only light poles, power lines and communication lines facilities and appurtenances to underground facilities such as regulator vault gauge boxes, highway crossing casing vents, service and system pressure regulator installations and pipeline markers will be allowed above-ground on State highways.

Section 530.480 Track and Rail Facilities

An applicant may be granted a permit for the placement of track and rails on a State highway right-of-way based upon the following classifications:

- a) An applicant which is a registered rail carrier in accordance with the rules and procedure of the Illinois Commerce Commission shall, in addition to the permission required by this Part, have the permission of the ILCC to place track and rail across a highway at grade.
- b) An applicant which is a registered rail carrier shall secure the permission required by this Part to place track and rail in any manner on highway right-of-way except as provided in Section 530.480(a).
- c) An applicant which is not a registered rail carrier

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- d) shall secure the permission required by this Part to place track and rail on highway right-of-way in any manner.
- e) A registered rail carrier which has track and rail facilities located at grade or otherwise on highway right-of-way pursuant to permit issued by the Department, agreement with the Department or order of the ILCC issued prior to the adoption of this Part need not comply with the provisions of Section 530.40(f).

SUBPART E: CONSTRUCTION METHODS AND MAINTENANCE WORK ON UTILITIES

Section 530.500 Construction Methods for Utility Installations

- a) Utility facilities shall be installed in a Department approved manner, as defined in Section 530.30. Compliance with this Section does not necessarily constitute compliance with relevant rules of other State agencies such as the ILCC rules entitled "Construction of Electric Power and Communication Lines" (83 Ill. Adm. Code 305) and applicable Environmental Protection Agency regulations.
- b) Boring or Jacking
- 1) Boring or jacking under State highways shall be accomplished from pits located a minimum of 30 feet from the edge of pavement on fully access-controlled highways and at a distance of ten feet plus the depth of the pit without shoring on conventional highways. If shoring is used, the pits shall be located a minimum of ten feet from the edge of pavement on conventional highways. The shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.
 - 2) Wet boring or jetting will not be permitted under the roadway structure of State highways.
 - 3) Borings over six inches in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than one inch. Borings six inches and under may be accomplished by either jacking, guided whip auger, or auger with following pipe method. Pits for boring or jacking shall be

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excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades.

- c) Trenching
- 1) The length of open trench shall be kept to the practicable minimum consistent with requirements for pipeline testing.
 - 2) Open trench and windrowed excavated material shall be protected as required by Section 530.240. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection.
 - 3) Excavated material will not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.
 - 4) Any utility located within the drip line of any tree designated by the Department to be spared, shall be bored under the root system.
- d) Backfilling
- 1) All trenches and excavations under pavements shall be backfilled with a Department approved granular material and compacted in a Department approved manner as defined in Section 530.30.
 - 2) All other excavations shall be refilled with Department approved materials and construction methods, including compaction as defined in Section 530.30. When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.
- e) Pavement Cuts
- Pavement cuts for utility installation or repair will not be permitted on any State highway open for traffic. If a variance is permitted in accordance with Section 530.130, the following requirements shall apply:
- 1) All saw cuts will be full depth.
 - 2) Restoration of pavement shall be completed as quickly as feasible and shall be done in accordance with Section 530.250.
 - 3) Unless otherwise directed, temporary repair with bituminous mixture shall be allowed.

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- 4) Any failure of either the temporary repair or the restored pavement shall be immediately corrected.
- f) **Material Storage on Right-of-Way**
All pipe, conduit, wire, poles, cross arms or other materials distributed along the highway prior to installation shall be placed as remotely as practicable from the edge of pavement in a manner to minimize its being a hazard to errant vehicles or an obstacle to highway maintenance and not in the clear zone. If material is to be stored on highway right-of-way for more than two weeks prior to installation, approval must be obtained from the Department as defined in Section 530.30.
- g) **Operational Restrictions**
1) Utility construction or maintenance operations on State highway right-of-way may be required to be discontinued during periods of inclement weather when such operations would create extraordinary hazards to highway traffic (e.g. the use of steel plates may be restricted in winter).
- 2) Such operations may also be required to be discontinued or restricted when soil conditions are such that the utility work would result in extensive damage to the highway right-of-way.
- 3) These restrictions will be waived when emergency work is required to restore vital utility services.

Section 530.510 Encasement

- a) Encasement of underground utility crossings where required is intended to serve one or more of the following purposes:
- 1) To allow replacement of utility without future disruption of roadway structure.
 - 2) To allow installation of additional facilities without future disruption of roadway structure.
 - 3) To vent or drain leaks of volatile gases or liquids that might occur under the roadway structure.
 - 4) To serve as bridge or carrier through unstable soil structure.
 - 5) To prevent cavitation under pavement structure from leaks of pressurized liquids.
 - 6) To allow ease of insertion and coating protection of utility conductor or carrier.

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- 7) To provide protection of utility conductor or carrier from superimposed loads or "dig-in" damage.
- b) Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the Department as defined in Section 530.30.
- c) Underground utility crossings without encasement will generally preclude future maintenance or repair in the area between ditch lines or toes of slopes.

Section 530.520 Post Installation Location

All non-metallic underground utilities will have a Department approved metallic locator installed above the facility.

Section 530.530 Track and Rail Inspection and Maintenance

- a) A permittee, other than a registered rail carrier classified in accordance with Section 530.480(a), shall, in addition to special permit conditions, undertake the following inspection and maintenance obligations.
- 1) Inspect its facilities at least once a year, unless otherwise specified by its permit.
 - 2) Maintain its track and rail facilities to meet the following standards:
 - A) The rails on at-grade crossings shall be flush with the highway surface. Crossing materials shall not be loose or unstable. The highway surface shall not be rough (i.e., deviations in surface plane shall not exceed 3-4" in any one yard square area).
 - B) Warning and protection devices shall be fully functional.
 - C) Each overpass must be able to support the loads for which it is designed and used. Furthermore, portions of an overpass structure or other materials shall not be allowed to fall onto the highway below.
 - D) Underpasses must be able to support the highway and its users above.
 - 3) Submit condition-inspection reports.
 - A) Said reports shall have a format which meets the information requirements of the Department and the National Bridge

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Inspection Standards, incorporated by reference in Section 530.20.

- B) The reports shall be submitted to the appropriate Department's District Office issuing the permit within 25 days after the inspection of the facility.
- C) If an imminently dangerous condition is found at a track and rail facility, that condition shall be immediately reported to the Department.
- 4) Take all necessary steps to keep the highway open and safe for motorists.
- b) A permittee classified in accordance with Section 530.480(a) shall undertake the inspection and maintenance obligations required by the statutes governing, regulations adopted and orders issued by the ILCC.
- c) The Department may make verification inspections of track and rail facilities to ascertain whether they are being properly maintained and whether condition reports of those facilities are accurate. Deficiencies shall be corrected within 30 days unless otherwise specified.
- d) The inspection and maintenance required by this Part shall not apply to registered rail carriers which have track and rail facilities located at grade or otherwise on highway right-of-way pursuant to permit issued by the Department, agreement with the Department or order of the ILCC prior to the adoption of this Part.

SUBPART F: VEGETATION CONTROL

Section 530.600 Tree Trimming

- a) The Department's policies for the preservation and conservation of roadside trees, shrubs, and turf are based on the inherent value of these environmental features to the public well-being and enjoyment.
- b) Tree trimming for line clearance shall not be considered a normal maintenance operation and each tree trimming project shall require the application for and the issuance of a separate working permit.
- c) Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workmen with supervision who are experienced in accepted tree pruning practices.
- d) Poor pruning practices resulting in damaged or misshapened trees will not be tolerated and shall be

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- e) grounds for cancellation of the tree trimming permit and for assessment of damages.
The Department will require compensation for trees extensively damaged and for trees removed without authorization. The formula developed by the International Society of Arboriculture, incorporated by reference in Section 530.20, will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees.
- f) The Department may require the removal of trees if trimming or radical pruning would leave them in an unacceptable condition.
- g) The Department may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.
- h) Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

Section 530.610 Chemical Vegetation Control

- a) Spraying of live foliage with any type of brush-killing chemicals in lieu of cutting will not be permitted on State highway right-of-way.
- b) Each permit application for chemical use for growth retardant or prevention of reestablishment of brush will be considered individually. Approval or disapproval will be based on the location and the proposed methods and materials.
- c) Permit applications for chemical control of vegetation shall require certification that the work will be accomplished by personnel licensed by the Department of Agriculture as Herbicide Applicators.

SUBPART G: UTILITY ATTACHMENTS TO BRIDGES OR TRAFFIC STRUCTURES

Section 530.700 General

- a) It shall be the general policy of the Department to grant approval for accommodation of utilities on bridges only when engineering and economic study substantiates that all other means of accommodating the utility are not practical. Other means shall include, but not be limited to, underground, under stream,

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independent poles, cable supports and tower supports, all of which are completely separated from the bridge. The utility company shall include the supporting data in their request that indicates the impracticality of alternate routing.

- b) This Section covers the requirements, limitations, procedures, and assessment of charges for the permitted attachment of utility facilities to bridges or traffic structures on or over State highways that are under the jurisdiction of the Department of Transportation.
- c) The provisions of this Section are applicable to both existing and proposed bridges for the attachment of a new utility, the expanding of an existing utility attachment, or the voiding of an attachment permit. Utility facilities attached to highway structures constitute varying degrees of hazards to the highway user and to the structure itself. Utility facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present the higher degrees of risk and such installations will normally not be permitted. Approval or disapproval of an application for utility attachment to a highway structure will be based on the following considerations:
 - 1) The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to the highway user.
 - 2) The type, length, value, and relative importance of the highway structure in the transportation system.
 - 3) The alternative routings available to the utility and their comparative practicality.
 - 4) The proposed method of attachment.
 - 5) The degree of interference with bridge maintenance and painting.
 - 6) The effect on the visual quality of the structure.
 - 7) The public benefit expected from the utility service as compared to the risk involved.
- e) When the Department requires the removal or adjustment of any existing utility attachment due to the renovation or removal of an existing bridge, the existing permit will be automatically voided, and if a new permit is applied for and approved, the utility owner will be assessed in accordance with this Part.
- f) The issuance of a Bridge Attachment Permit will acknowledge receipt of the assessment charge and will

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give the necessary permission to attach, operate, and maintain the facility. In the case of a new structure, the permit will serve as an agreement during the period of construction and as a permit to attach, operate, and maintain the facility upon completion of the construction.

- g) The utility owner shall provide approved cut-off facilities at each end of the highway structure in order that service through the facilities attached to the structure can be cut off in case of accident or other occurrence requiring such interruption.

Section 530.710 Methods of Attachment

a) Prohibited Attachment

No utility attachment to a bridge or traffic structure will be considered that proposes any of the following practices:

- 1) Burying conduits or cables in bridge slabs or sidewalks.
- 2) Drilling holes outside the middle third of the web of load carrying steel structural elements.
- 3) Welding on structural steel elements of the structure.
- 4) Drilling into prestressed or post-tensioned, concrete supporting beams.
- 5) Casting inserts into the bottom of prestressed concrete members.
- 6) Attaching in a manner that will reduce critical clearances.
- 7) Attaching outside the fascia of the bridge or structure.
- 8) Gas pipelines over four inches in diameter or having internal pressure in excess of 75 psig.
- 9) More than one gas pipeline for each structure.
- 10) Pipelines carrying liquids or gases of an extraordinarily hazardous nature shall not be attached to highway structures.

b) Acceptable Attachment Practices

When and where the attachment of a utility to a highway bridge or structure is given favorable consideration, the following general practices shall be followed:

- 1) The attachment shall be located below the floor of the structure between beams or girders and above the lowest structural member on existing structures. Conduits may be designed into a new structure for approved attachments.

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- 2) Supports and hangers shall be designed to clamp or bolt to steel structural elements.
- 3) Supports and hangers shall be designed to clamp or bolt to prestressed or post-tensioned concrete structural elements without drilling.
- 4) Utility facilities may be hung from inserts drilled on existing bridges or cast on new construction into non-critical concrete areas such as the floor slab. Inserts on new construction will be furnished and installed by the Department and shown in detail on construction plans.
- 5) The petitioner shall submit plans and specifications showing the size, weight per foot, and proposed method of attachment of the utility elements and stating the type of commodity to be transmitted, the proposed pressure or voltage, and giving the proposed location of cutoffs adjacent to the structure.
- 6) A permit for bridge attachment will provide conduit or pipe capacity for any anticipated expansion. In the interest of simplification, the assessment charge shall be calculated assuming that all conduits of the proposed system are filled.
- 7) All work of attachment and maintenance of the utility facilities shall be accomplished by the utility. In the case of a new bridge or traffic structure, the contract special provisions will require the State's contractor to cooperate with the utility company with the understanding that the utility company will furnish and install the necessary conduits or pipes and appurtenances.

SUBPART H: APPLICATION DENIAL, REVOCATION AND SANCTIONS

Section 530.800 Denial of Applications

- a) A permit shall be granted unless the Department makes any of the following findings:
 - 1) that an applicant has a history of not responding to Department requests;
 - 2) that there is no public need for the placement of the requested facility on the highway right-of-way;
 - 3) the placement of the requested facility on the highway right-of-way will unduly threaten the safety and convenience of highway users;
 - 4) that the proposed facility, its installation, or

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- 5) the proposed installation is not in compliance with this Part; or
- 6) that the applicant does not have liability insurance sufficient to satisfy Section 530.50 Indemnification and Insurance.
- b) If an application for a permit is denied, the Department will submit a letter to the utility company explaining the reason for denial. The application may be resubmitted for consideration if the application can be modified to meet the Department's objections as specified in the letter of denial.

Section 530.810 Sanctions and Other Remedies

- a) Failure of the permittee to do any of the following constitutes grounds to revoke a permit issued under this Part:
 - 1) comply fully with the terms of the permit, including the provisions set forth in this Part;
 - 2) remove, relocate, or otherwise modify its facility, in a timely manner, when required to do so by the Department; and
 - 3) pay, within 90 days, the costs apportioned to it pursuant to Section 530.320 and provisions of this Part.
- b) Noncompliance of a continuing, pervasive, or serious nature may result in the revocation or modification of all of the permittee's permits throughout the State. Upon revocation of its permit, or if notified that no valid permit exists and that a permit is required, the responsible party shall remove its facility in a timely manner (See Section 530.30 "timely") at no expense to the Department.
- d) If the Department finds mitigating circumstances (such as unavailability of funds or that the failure to comply had not caused major problems), the Department may impose sanctions and conditions on a permittee which may include, but not be limited to, the following:
 - 1) The permit may be revoked in part.
 - 2) A surety bond may be required, even for facilities already in place.
 - 3) Existing and future facilities may be required to be buried and encasement may also be required.

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- e) Failure of a permittee (or former permittee) to comply with the Department's notice of revocation or amendment constitutes a violation of this Part and Section 9-113 of the Code.

Section 530.820 Incompatibility With Highway Use

If the continued use and occupancy of the right-of-way is incompatible with highway needs, the Department may require the permittee to modify or remove its facility and may amend or revoke the permit.

Section 530.830 Non-Use

- a) The permittee shall notify the Department within 15 days of the termination of its use of a facility. If requested to do so by the Department, the permittee shall remove its facilities and restore the right-of-way in accordance with Section 530.250. Such removals are not expected to be normal requirements, and will be requested only when the abandoned or non-used utility facilities will interfere with anticipated construction or other anticipated use of the right-of-way in the area, or when existence of the abandoned or non-used utility facilities could be detrimental to the highway. The Department may require the permittee to convey ownership, control, and responsibility of the abandoned facility to the State of Illinois in exchange for being allowed to leave the facility in or on the right-of-way.

- b) If the permittee terminates its use of facilities attached to a bridge or traffic structure, the Department may require all utility appurtenances be removed at the permittee's expense. The removal shall include all clamps or other appurtenances. The bridge or traffic structure where appurtenances were located shall be painted and restored to its original condition as part of the removal.

Section 530.840 Change of Ownership or Owner's Identity or Legal Status

- a) The permittee shall notify the Department's District Office that issued the permit within ten days prior to the transfer of a permitted facility to another party.
- b) The new owner shall request that the permit be amended to show current ownership. If the new owner fails to

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have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the State's right-of-way.

- c) If a permittee is sold (e.g., a corporation is sold), no change in the permit is required. The new owner of the permittee shall have all the obligations and privileges enjoyed by the former owner.
- d) If the legal status of the permittee changes (e.g., corporate merger or the incorporation of a partnership), the permittee is still bound by the permit, but must notify the Department of the change in the legal status.

SUBPART I: ADMINISTRATIVE REMEDIES**Section 530.900 Administrative Review**

- a) If the applicant and the District cannot agree either on whether the permit should be issued or on what conditions would be appropriate, the applicant may, within 30 days of the issuance of written notice of the District's position, appeal the District's determination to the Chief of the Department's Central Bureau of Maintenance.
- b) This appeal shall be in writing, shall clearly State the areas of disagreement and the basis for the applicant's position, and shall be directed to:

Illinois Department of Transportation
Division of Highways
Chief of the Bureau of Maintenance
2300 South Dirksen Parkway
Springfield, Illinois 62764

- c) If requested in the appeal, the Chief of the Department's Bureau of Maintenance or designee shall provide an opportunity to be heard within ten days of the request. In availing itself of this opportunity, the applicant may present evidence and arguments which may tend to rebut the District's determination which is being appealed.
- d) The Chief should either reaffirm or revise, in writing, the initial determination within 15 calendar days of having heard the applicant's appeal. If no reaffirmation or modification of the Department's determination is made within 15 calendar days, that determination shall remain in effect as if expressly affirmed.

DEPARTMENT OF TRANSPORTATION

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Section 530. Illustration A -- District Boundary Map

ILLINOIS DEPARTMENT OF TRANSPORTATION
DISTRICT BOUNDARIES WITH OFFICE LOCATIONS

DISTRICT ENGINEERS

DISTRICT 1
201 WEST CENTER COURT
(INSIDE DELIVERY)
CHICAGO, ILLINOIS 60606-1096
PHONE: 312/787-4000

DISTRICT 2
818 DEPOT AVENUE
CHICAGO, ILLINOIS 60621-3546
PHONE: 312/284-4271

DISTRICT 3
700 EAST MORRIS DRIVE
P.O. BOX 597
OTTAWA, ILLINOIS 61350-0697
PHONE: 815/434-6131

DISTRICT 4
6035 NORTH KNOXVILLE AVENUE
PEORIA, ILLINOIS 61614-3595
PHONE: 309/691-7110

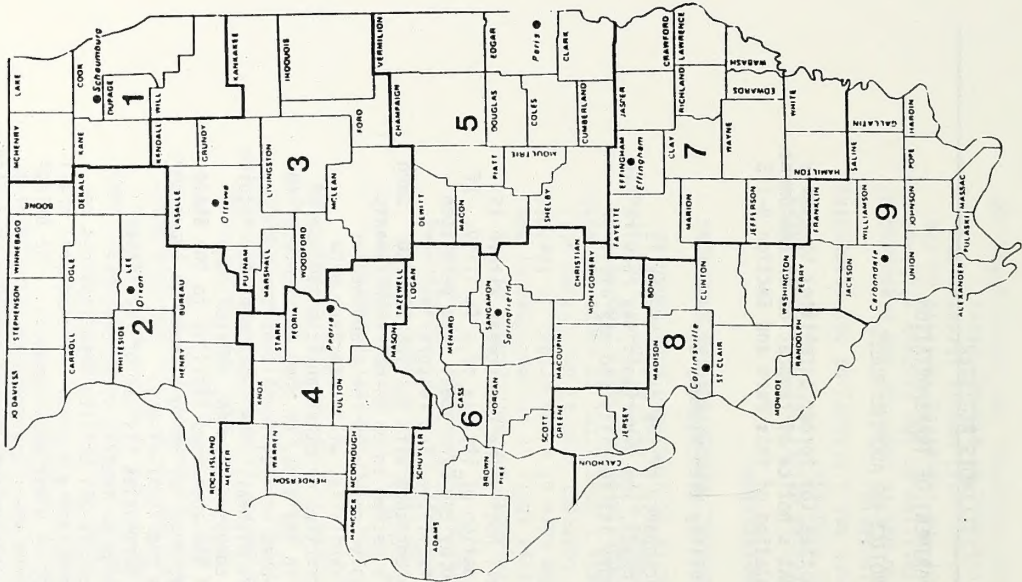
DISTRICT 5
STATE HIGHWAY BUILDING
SPRINGFIELD, ILLINOIS 62704-610
PHONE: 217/465-4810

DISTRICT 6
125 EAST ASH STREET
SPRINGFIELD, ILLINOIS 62704-4166
PHONE: 217/782-7301

DISTRICT 7
400 WEST WABASH
EFFINGHAM, ILLINOIS 62401-7599
PHONE: 217/342-3951

DISTRICT 8
1100 EASTPORT PLAZA DRIVE
P.O. BOX 988
COLLINGSVILLE, ILLINOIS 62234-6198
PHONE: 618/346-3100

DISTRICT 9
STATE HIGHWAY BUILDING
CARBONDALE, ILLINOIS 62903-0100
PHONE: 618/549-2171



DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED REPEALER

1) Heading of Part: Accommodation of Utilities on Right-of-Way

2) Code Citation: 92 Ill. Adm. Code 530

3) Section Numbers: Adopted Action:

530.10	530.20	530.30	530.101	Repeal
530.102	530.103	530.104	530.105	Repeal
530.106	530.107	530.108	530.109	Repeal
530.110	530.111	530.112	530.113	Repeal
530.114	530.115	530.116	530.117	Repeal
530.118	530.119	530.120	530.121	Repeal
530.122	530.123	530.201	530.202	Repeal
530.203	530.301	530.302	530.303	Repeal
530.401	530.402	530.403	530.501	Repeal
530.502	530.503	530.601	530.602	Repeal
530.603	530.701	530.702	530.801	Repeal
530.802	530.803	530.804	530.901	Repeal
530.902	530.903	530.904	530.905	Repeal
530.906	530.907	530.908	530.909	Repeal

4) Statutory Authority: Ill. Rev. Stat. 1981, ch. 121, pars. 9-113 and 4-201.1

5) Effective date of rules: January 27, 1992

6) Does this rulemaking contain an automatic repeal date? No

7) Does this repealer contain incorporations by reference? Yes

These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.

8) Date filed in agency's principal office: January 24, 1992.

9) Notice of proposal published in Illinois Register:

February 22, 1991, 15 Ill. Reg. 3003

10) Has JCAR issued a Statement of Objections to these rules?
No

11) Differences between proposal and final version: None

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12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements letter issued by JCAR?
No changes were necessary.

13) Will this rule replace an Emergency Rule currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of rules:

By this rulemaking, the Department is repealing Part 530, and elsewhere in this issue of the Illinois Register, is adopting a new set of rules to replace this Part.

16) Information and questions regarding these adopted rules shall be directed to:

Mr. Robert Jones
Engineer of Maintenance
Department of Transportation
Division of Highways
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 782-7231

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

- 1) The Heading of the Part: FISCAL YEAR 1992 EMERGENCY BUDGETARY CHANGES
- 2) Code Citation: 89 Ill. Adm. Code 150
- 3) Section Numbers: Emergency Action:
150.10 New Section
150.20 New Section
150.30 New Section
150.40 New Section
150.50 New Section
150.60 New Section
- 4) Statutory Authority: The Emergency Budget Act of Fiscal Year 1992
- 5) Effective Date of Emergency Rules: February 1, 1992
- 6) If these Emergency Rules are to expire before the end of the 150-day period, please specify the date on which they are to expire: These Emergency Rules shall expire July 1, 1992.
- 7) Date Filed in Agency's Principal Office: February 1, 1992
- 8) Reason for Emergency: These Emergency Rules are being filed pursuant to the Emergency Budget Act of Fiscal Year 1992. That Act added Section 5.02a to the Illinois Administrative Procedure Act which declares that the State's current financial situation constitutes an emergency for the purposes of Illinois Administrative Procedure Act and allows the Department to file Emergency Rules to implement changes made under the Emergency Budget Act of Fiscal Year 1992.
- 9) A Complete Description of the Subjects and Issues Involved: These Rules make substantive changes in the Department's programs required under the Emergency Budget Act of Fiscal Year 1992. These Rules make changes in programs for which substantive Rules exist. The changes are effective until July 1, 1992. The Department is also making administrative and procedural changes that are not the subject of rulemaking which are not covered by these Rules. The specific changes being made are as follows:

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

- 1) The Payment Levels for the State Transitional Assistance and State Family and Children Assistance programs in the City of Chicago and local governmental units receiving State funds are reduced by approximately 6.8% to the levels in effect immediately prior to the January 1990 grant increase.
- 2) Transitional Payments for clients to supplement a client's grant when the grant amount for a month has been determined using retrospective budgeting when the source of the income budgeted has since ceased or been substantially reduced are eliminated.
- 3) Uncompensated Care payments made to non-disproportionate share hospitals are eliminated.
- 4) Payments made under the Quality Incentive Program and related programs are reduced.
- 5) Payments for Specialized Services and Active Treatment for Mentally Ill and Developmentally Disabled clients in nursing facilities are eliminated.
- 10) Are there any Proposed Amendments pending to this Part? No
- 11) Statement of Statewide Policy Objectives: The changes in the State Transitional Assistance and State Family and Children Assistance programs will effect local governmental units.

- 12) Information and questions regarding these Emergency Rules shall be directed to:

Name: David E. Peterson, Deputy General Counsel
Office of the General Counsel

Address: Illinois Department of Public Aid
Jesse B. Harris Building II
100 South Grand Avenue East, 3rd Floor
Springfield, Illinois 62762

Telephone: 217/782-1233

Interested parties can review the rules pertaining to this change at the Department of Public Aid's local office located in each county, except Cook County, where the rules

DEPARTMENT OF PUBLIC AID

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can be reviewed at the Director's Office, 624 S. Michigan, 13th Floor, Chicago, Illinois. The rule may be reviewed at all offices Monday through Friday, 8:30 a.m. until 5:00 p.m.

The full text of the Emergency Rules begins on the next page:

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF PUBLIC AID

SUBCHAPTER e: GENERAL TIME-LIMITED CHANGES

PART 150

FISCAL YEAR 1992 EMERGENCY BUDGETARY CHANGES

Section

150.10

General Provisions

EMERGENCY

150.20 State Transitional Assistance and State Family and

150.30 Children Assistance

EMERGENCY Transitional Payment

150.40 Uncompensated Care

EMERGENCY

150.50 Quality Incentive Program (QUIP) and Related

EMERGENCY Programs

150.60 Specialized Services and Active Treatment Payments

EMERGENCY

AUTHORITY: Implementing Articles IV, V and VI, and authorized by Section 12-13 of the Illinois Public Aid Code, Ill. Rev. Stat. 1989, ch. 23, pars. 4-1, 5-1 and 6-1 et seq., and 12-13.

SOURCE: Emergency rules adopted 7 Ill. Reg. 1178, effective February 1, 1983, for maximum of 150 days; emergency expired July 4, 1983; emergency rules adopted at 16 Ill. Reg. 2258, effective February 1, 1992, for a maximum of 150 days.

Section 150.10

General Provisions

EMERGENCY

- a) As an emergency measure to reduce Department expenditures for Fiscal Year 1992, the Department of Public Aid has adopted this Part 150 which makes substantive changes in the Department's programs. All the changes implemented in this Part 150 shall be effective on the date as indicated in each Section and shall remain effective through June 30, 1992.

- b) These changes are being made pursuant to the authority of the Emergency Budget Act of 1992, under which funds appropriated to the Department are placed in contingency reserves and cannot be transferred, obligated encumbered, expended or otherwise committed during the remainder of Fiscal Year 1992.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

Section 150.10

EMERGENCY

General Provisions (Cont'd)

- c) The Department shall send such notices as are currently required under State and Federal law to inform clients, providers and other interested parties of the changes made by these Rules under this Part 150.

Section 150.20

EMERGENCY State Transitional Assistance and State Family and Children Assistance

- a) Notwithstanding any other provisions of the Department's Rules promulgated under the Illinois Administrative Procedure Act, and in accordance with Section 150.10 of the Department's Rules, as the creation of a contingency reserve has reduced the amount of funds available during Fiscal Year 1992 for the payment of grants under the State Transitional Assistance program and the State Family and Children Assistance program under Article VI of the Public Aid Code (Ill. Rev. Stat. 1989, ch. 23, pars. 6-1 et seq.), the Payment Levels for these two programs are reduced.

- b) The Payment Level for the State Transitional Assistance program in the City of Chicago shall be: \$154 per month.

- c) The following Payment Levels are established for State Family and Children Assistance programs in the City of Chicago and in local governmental units receiving State funds.

- d) The counties included in Group I are:

Boone	Kane	Ogle
Champaign	Kankakee	Whiteside
Cook	Kendall	Winnebago
DeKalb	Lake	Woodford
DuPage	McHenry	

Section 150.20 EMERGENCY	State Transitional Assistance and State Family and Children Assistance (Cont'd)	SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE(S) AND CHILD(REN) ONLY	CHILD(REN) ONLY	PAYMENT LEVEL
		1	154	95	
		2	250	187	
		3	342	232	
		4	386	297	
		5	452	353	
		6	507	379	
		7	534	408	
		8	562	437	
		9	591	468	
		10	623	501	
		11	656	536	
		12	690	572	
		13	727		
		14	765		
		15	806		
		16	848		
		17	893		
		18	940		

e) The counties included in Group II are:

Adams	JoDavieess	Moultrie
Bureau	Knox	Peoria
Carrroll	LaSalle	Piatt
Clinton	Lee	Putnam
Coles	Livingston	Rock Island
Dewitt	Logan	Sangamon
Douglas	Macon	St. Clair
Effingham	Macoupin	Stephenson
Ford	Madison	Tazewell
Fulton	McDonough	Vermilion
Grundy	McLean	Wabash
Henry	Mercer	Warren
Iroquois	Monroe	Will
Jackson	Morgan	

Section 150.20 EMERGENCY	State Transitional Assistance and State Family and Children Assistance (Cont'd)	SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE(S) AND CHILD(REN) ONLY	CHILD(REN) ONLY	PAYMENT LEVEL
		1	149	91	
		2	241	181	
		3	331	226	
		4	375	290	
		5	439	344	
		6	493	370	
		7	519	398	
		8	547	427	
		9	576	457	
		10	606	489	
		11	638	522	
		12	671	558	
		13	707		
		14	744		
		15	783		
		16	825		
		17	869		
		18	914		

f) The counties included in Group III are:

Alexander	Edgar	Jasper	Montgomery	Shelby
Bond	Edwards	Jefferson	Perry	Stark
Brown	Fayette	Jersey	Pike	Union
Calhoun	Franklin	Johnson	Pope	Washington
Cass	Gallatin	Lawrence	Pulaski	Wayne
Christian	Greene	Marion	Randolph	White
Clark	Hamilton	Marshall	Richland	Williamson
Clay	Hancock	Mason	Saline	
Crawford	Hardin	Massac	Schuyler	
Cumberland	Henderson	Menard	Scott	

Section 150.20 EMERGENCY	State Transitional Assistance and State Family and Children Assistance (Cont'd)	SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE(S) AND CHILD(REN) ONLY	CHILD(REN) ONLY	PAYMENT LEVEL
		1	144	88	
		2	230	175	

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

Section 150.20 State Transitional Assistance and State Family and Children Assistance (Cont'd)

SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE(S) AND CHILD(REN)	CHILD(REN) ONLY
PAYMENT LEVEL	PAYMENT LEVEL	PAYMENT LEVEL
3	316	221
4	362	281
5	422	334
6	476	360
7	501	386
8	527	414
9	556	444
10	585	475
11	616	507
12	648	541
13	682	
14	718	
15	756	
16	796	
17	838	
18	882	

g) The Payment Level for the State Transitional Assistance programs in local governmental units receiving State funds shall be: Group I counties-\$154 per month; Group II counties-\$149 per month; Group III counties-\$144 per month.

h) These new Payment Levels shall take effect February 1, 1992 and shall remain in effect through June 30, 1992. Grants paid during the months of February through June 1992 shall be calculated using the above Payment Levels, even though grants paid in the month of June 1992 are meant to cover some days of July 1992. Grants paid during the month of July 1992 and thereafter shall be calculated using the Payment Levels in effect in January 1992.

Section 150.30 Transitional Payments
EMERGENCY

a) Notwithstanding any other provisions of the Department's Rules promulgated under the Illinois

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

Section 150.30 Transitional Payments (Cont'd)
EMERGENCY

Administrative Procedure Act, and in accordance with Section 150.10 of the Department's Rules, as the creation of a contingency reserve has reduced the funds available during Fiscal Year 1992 for the payment of Transitional Payments to clients for supplementary grants under Sections 4-2 and 6-2 of the Public Aid Code (Ill. Rev. Stat. 1989, ch. 23, pars. 4-2 and 6-2), when the grant amount for a month has been determined using retrospective budgeting and the source of the income budgeted has since ceased or been substantially reduced, the Department shall not make Transitional Payments.

b) Transitional Payments shall not be made by the Department to supplement grants paid during the months of March through June 1992. Transitional Payments may be made to eligible clients to supplemental grants paid during the month of July 1992 and thereafter to the same extent as such payments were available in the month of January 1992.

Section 150.40 Uncompensated Care
EMERGENCY

a) Notwithstanding any other provisions of the Department's Rules promulgated under the Illinois Administrative Procedure Act, and in accordance with Section 150.10 of the Department's Rules, as the creation of a contingency reserve has reduced the funds available during Fiscal Year 1992 for the provision of payments for Uncompensated Care, the following changes have been made in the eligibility for and payment of Uncompensated Care payments to hospitals.

b) Hospitals that qualify for disproportionate share status only pursuant to the criteria for critical care access payments and hospitals that do not qualify for disproportionate share status shall not be eligible to receive uncompensated care payments for the time period of October 1, 1991, through June 30, 1992.

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

Section 150.50 Quality Incentive Program (QUIP) and Related
EMERGENCY Programs

- a) Notwithstanding any other provisions of the Department's Rules promulgated under the Illinois Administrative Procedure Act, and in accordance with Section 150.10 of the Department's Rules, as the creation of a contingency reserve has reduced the funds available during Fiscal Year 1992 for the provision of payments under the Quality Incentive Program (QUIP), the following changes have been made eligibility for and payments made under QUIP to long term care facilities.
- b) The amount of reimbursement received by long term care providers for the Quality Incentive Program (QUIP) and for start-up funding for implementation of the Achieving Ongoing Excellence (A-ONE) program for nursing facilities and the Total Life Integration (TLI) program for ICF/MR facilities shall be reduced by 48.3%. The amounts paid in January 1992 range from \$.96 to \$2.96 for nursing facilities and are \$2.57 for ICF/MR facilities, per Medicaid resident per day. The new amounts range from \$.50 to \$1.53 for nursing facilities and are \$1.33 for ICF/MR facilities.
- c) The reduced payments shall be made for services provided February 1, 1992, and thereafter.

Section 150.60 Specialized Services and Active Treatment
EMERGENCY Payments

- a) Notwithstanding any other provisions of the Department's Rules promulgated under the Illinois Administrative Procedure Act, and in accordance with Section 150.10 of the Department's Rules, as the creation of a contingency reserve has reduced the funds available during Fiscal Year 1992 for the payment Specialized Services and Active Treatment for Mentally Ill and Developmentally Disabled clients living in nursing facilities, the following changes have been made.
- b) The \$10 add-on for Specialized Services for mentally ill clients in nursing facilities which are not designated for service to the mentally ill shall not be paid to the nursing facility. The \$10 add-on for

DEPARTMENT OF PUBLIC AID

NOTICE OF EMERGENCY RULES

Section 150.60 Specialized Services and Active Treatment
EMERGENCY Payments (Cont'd)

- Active Treatment for developmentally disabled clients in nursing facilities which are not designated for services to the mentally retarded or developmentally disabled shall not be paid to the nursing facility.
- c) This Section shall be effective February 1, 1992, and shall apply to Specialized Services and Active Treatment provided clients during the month of February 1992 and thereafter. The Department will again pay for Specialized Services and Active Treatment provided to clients in the month of July 1992 and thereafter to the same extent as was paid in for Specialized Services and Active Treatment provided in January 1992.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF MODIFICATION TO EMERGENCY AMENDMENTS

1) The Heading of the Part: Licensing Standards for Day Care Homes

2) Code Citation: 89 Ill. Adm. Code 406

3) Section Numbers: 406.2

4) Notice of Emergency Amendments Published in the Illinois Register:

October 18, 1991, 15 Ill. Reg. 14734
(issue date)

5) JCAR Statement of Objection to Emergency Amendments Published in the Illinois Register: December 6, 1991, 15 Ill. Reg. 17795

6) Summary of Action Taken by the Agency: The Committee objects to the rulemaking entitled Licensing Standards for Day Care Homes because the Department failed to amend language in the definition of day care home to reflect the statutory increase in the maximum capacity for day care homes from 8 to 12 children. The definition of "day care home" was revised to reflect 12 as the maximum number of children who may be cared for in a day care home.

The full text of the of the Section(s) of the emergency amendments being modified begins on the next page:

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER a: REQUIREMENTS FOR LICENSURE

PART 406
LICENSING STANDARDS FOR DAY CARE HOMES

Section 406.1	Purpose
Section 406.2	Definitions
EMERGENCY	
Section 406.3	Effective Date of Standards
Section 406.4	Application for License
Section 406.5	Applications for Renewal of License
Section 406.6	Provisions Pertaining to the License
Section 406.7	Provisions Pertaining to Permits
Section 406.8	General Requirements for Day Care Homes
EMERGENCY	
Section 406.9	Characteristics and Qualifications of the Day
EMERGENCY	Care Family
Section 406.10	Qualifications for Assistants
EMERGENCY	
Section 406.11	Substitutes
Section 406.12	Admission and Discharge Procedures
Section 406.13	Number and <u>Ages</u> of Children Served
EMERGENCY	
Section 406.14	Health and Medical Care
Section 406.15	Discipline of Children
Section 406.16	Activity Requirements
Section 406.17	Nutrition and Meals
Section 406.18	Transportation of Children By Day Care Home
Section 406.19	Swimming
Section 406.20	Children with Special Needs
Section 406.21	School Age Children
Section 406.22	Infants and Toddlers
Section 406.23	Night Care
Section 406.24	Records and Reports
Section 406.25	Confidentiality of Records and Information
Section 406.26	Cooperation with the Department
Section 406.27	Severability of This Part
Appendix A	Meal Pattern Chart for Children 0 to 12 Months of Age
Appendix B	Meal Pattern Chart for Children Over One Year of Age

AUTHORITY: Implementing and authorized by The Child Care Act of 1969 (Ill. Rev. Stat. 1989, ch. 23, pars. 2211 et seq) as amended by P.A. 87-0674, effective September 23, 1991.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

SOURCE: Adopted and codified at 7 Ill. Reg. 7855, effective July 1, 1983; amended at 8 Ill. Reg. 24951, effective January 1, 1985; amended at 9 Ill. Reg. 2454, effective March 1, 1985; emergency amendments at 15 Ill. Reg. 15088, effective October 8, 1991 for a maximum of 150 days; modified at 16 Ill. Reg. 2269.

Section 406.2 Definitions
EMERGENCY

"Attendance" means the total number of children under the age of 12 present at any one time.

"Authorized representative of the Department" means the licensing representative or any person acting on behalf of the Director of the Department.

"Caregiver" means the individual directly responsible for child care.

Child means any person under 18 years of age

"Child care facility" means any person, group of persons, agency, association, or organization, which arranges for care or cares for children unrelated to the operator of the facility, apart from the parents in any facility as defined in the Act. Child care facilities may be established for profit or not-for-profit. "Child care facility" is further defined in paragraph 2.05 in The Child Care Act of 1969.

"Children with special needs" means children exhibit one or more of the following characteristics which is confirmed by clinical evaluation:

Visual impairment: the child's visual impairment is such that development to full potential without special services cannot be achieved.

Hearing impairment: the child's residual hearing is not sufficient to enable understanding the spoken word and to develop language, thus causing extreme deprivation in learning and communication, or a hearing loss is exhibited which prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning.

Physical or health impairment: the child exhibits a physical or health impairment which requires adaptation of the physical plant.

Speech and/or language impairment: the child exhibits deviations of speech and/or language processes which are outside the range of acceptable variation within a given environment and which prevent full social development.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

Learning disability: the child exhibits one or more deficits in the essential processes of perception, conceptualization, language, memory, attention, impulse control or motor function.

Behavioral disability: the child exhibits an effective disability and/or maladaptive behavior which significantly interferes with learning and/or social functioning.

Mental impairment: the child's intellectual development, mental capacity, and/or adaptive behavior are markedly delayed. Such mental impairment may be mild, moderate, severe or profound.

"Consultants" means those individuals providing technical assistance or advice regarding any aspect of the operation of the day care home.

"Day care homes" means family homes which receive more than 3 up to a maximum of 8 12 children for less than 24 hours per day. The maximum of 8 12 children includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household.

"Department" means the Illinois Department of Children and Family Services.

"Discipline" means the process of helping children to develop inner controls so that they can manage their own behavior in socially acceptable ways.

"Guardian" means the guardian of the person of a minor.

"Infant," as used in this Part, means a child between 6 weeks and 15 months of age.

"License" means a document issued by the Department of Children and Family Services which authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act of 1969.

"License study," as used in this Part, means the review of an application for license, on-site visit(s), interviews, and the collection and review of supporting documents to determine compliance with The Child Care Act of 1969 and the standards prescribed by this Part.

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

"Licensed capacity" means the maximum number of day care children under age 14 12 permitted in the home at any one time. Children age 12 and over on the premises are not considered in determining license capacity.

"Licensing representative" for the purposes of this Part, means those Department staff or other persons authorized under Section 5 of The Child Care Act of 1969 to examine facilities for licensure.

"Parents," as used in this Part, means those person(s) assuming legal responsibility for care and protection of the child on a 24-hour basis; includes guardian or legal custodian.

"Permit," as used in this Part, means a one-time only document issued by the Department of Children and Family Services for a two-month period to allow the individual(s) to become eligible for a license.

"Person" means any individual, group of persons, agency, association, or organization.

"Physician" means a person licensed to practice medicine in the State of Illinois.

"Premises" means the location of the day care home and attached yard, garage, and any other outbuildings.

"Program" means all activities provided for the children during their hours of attendance in the home.

"Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, great-grandparent, great-uncle, great-aunt, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin.

"School age" means children from 6 to 14 12 years of age.

"Special use areas" means areas of the home not used for child care on a daily basis. Special use areas include, but are not limited to, hazardous areas, any areas off-limits to children, bedrooms used only for napping, and bathrooms.

"Supervising agency," as used in this Part, means a licensed child welfare agency, a licensed day care agency, or the Department of Children and Family Services.

"Toddler" means a child from 15 months to 2 years of age. The term may include children up to 30 months of age depending upon physical or social development.

(Source: Emergency amendments at 15 Ill. Reg. 15088, effective October 8, 1991 for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of January 22, 1992 through January 28, 1992, and have been scheduled for review by the Committee at its March 3, 1992 meeting. Other items not contained in this published list may also be considered by the Committee at its March meeting. Members of the public wishing to express their views with respect to a rule should submit comments to the Committee at the following address: Joint Committee on Administrative Rules, 509 South Sixth Street, Suite 500, Springfield, IL 62701.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
3/9/92	Department of Insurance, Premium Fund Trust Account (50 Ill. Adm. Code 3113)	10/25/91 15 Ill. Reg. 15244	3/3/92
3/9/92	Department of Revenue, Messages Tax, Repeal of (86 Ill. Adm. Code 490)	11/22/91 15 Ill. Reg. 16913	3/3/92
3/9/92	Department of Revenue, The Public Utilities Revenue Act (86 Ill. Adm. Code 510)	11/22/91 15 Ill. Reg. 16932	3/3/92
3/9/92	Department of Transportation, Qualification of Drivers (92 Ill. Adm. Code 391)	11/15/91 15 Ill. Reg. 16653	3/3/92
3/12/92	Illinois Commerce Commission, Cellular Radio Exclusion (83 Ill. Adm. Code 760)	11/15/91 15 Ill. Reg. 16535	3/3/92
3/13/92	Commissioner of Banks and Trust Companies, Administration of Collateral Obtained in Collection of a Debt (38 Ill. Adm. Code 354)	3/15/91 15 Ill. Reg. 3614	3/3/92
3/13/92	Commissioner of Banks and Trust Companies, Acquisition of Former Main Banking Premises or Branches of Eligible Depository Institutions (38 Ill. Adm. Code 307)	3/15/91 15 Ill. Reg. 3611	3/3/92

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

(page 2)

Second Notice Expires	3/13/92	Agency and Rule	Office of the State Fire Marshal, Storage, Transportation, Sale and Use of Petroleum and Other Regu- lated Substances (41 Ill. Adm. Code 170)	Start of First Notice	7/26/91 15 Ill. Reg. 10875	JCAR <u>Meeting</u>	3/3/92
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PROCLAMATION

92-018

JAYCEE WEEK

Whereas, for more than 50 years, the Springfield chapter of the Junior Chamber of Commerce--the Jaycees--has taken an active role in the community; and

Whereas, the organization has been instrumental in the development of young leaders for the community and the state, providing individuals with a solid background rooted in public service; and

Whereas, this volunteer organization of young men and women has been vital in the betterment of its community through involvement in projects such as the Holiday Feast for Senior Citizens, Bundle 'Em Up, MDA Telethon, and the annual Christmas Parade; and

Whereas, the United States Junior Chamber of Commerce and its state and local affiliate chapters have set aside one week in January to commemorate the 72nd anniversary of the founding of the Jaycees;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 19-25, 1992, as JAYCEE WEEK in Illinois in recognition of the service the organization has provided to communities in our state.

Issued by the Governor January 7, 1992.

Filed with the Secretary of State January 23, 1992.

92-019

AFRO-AMERICAN HISTORY MONTH

Whereas, observance of Afro-American History Month was initiated in 1926 by Carter G. Woodson, who is known as the "Father of African-American History"; and

Whereas, Afro-American History Month pays respect to the heritage of Afro-American people and promotes increased respect for law and order and a greater understanding of the functioning of religious institutions; and

Whereas, the observance of Afro-American History Month across America during February 1992 will provide an opportunity to assess the progress that has been made in the United States in leadership activities among Afro-Americans;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 1992 as AFRO-AMERICAN HISTORY MONTH in the State of Illinois and urge citizens to pay tribute to the heritage of Afro-American people.

Issued by the Governor January 10, 1992.

Filed with the Secretary of State January 23, 1992.

92-020
COMMUNITY ASSOCIATIONS DAY

Whereas, Community Association Institute (CAI) is a national, nonprofit membership organization for those interested in community associations; and

Whereas, CAI has been serving the needs of the community association since its establishment in 1973; and

Whereas, CAI is dedicated to excellence in every facet of community associations, being the only organization serving the unique needs of those involved in common-interest communities and the only source of vital training and certification programs in its field; and

Whereas, CAI is committed to representing and involving all groups that are associated with community associations, including public officials, builders, developers, attorneys, accountants, insurance agents, property managers, and the homeowners themselves;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 8, 1992, as COMMUNITY ASSOCIATIONS DAY in Illinois in recognition of the contributions of this valuable organization.

Issued by the Governor January 16, 1992.

Filed with the Secretary of State January 23, 1992.

92-021
EYE DONOR AWARENESS MONTH

Whereas, more than 40,000 adults and children in the United States benefited from corneal transplant surgery in 1991; and

Whereas, donor eyes that are not used for corneal transplant surgery are used for valuable research on blinding eye diseases; and

Whereas, donor eye tissue is being made available now more than ever before, thanks to awareness programs promoted by the Illinois Eye-Bank, the Chicago Ophthalmological Society Eye-Bank Committee and Illinois hospitals;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim March 1992 as EYE DONOR AWARENESS MONTH in Illinois.

Issued by the Governor January 16, 1992.

Filed with the Secretary of State January 23, 1992.

92-022
FAMILY WEEK

"There's no vocabulary for love within a family, love that's lived in but not looked at, love within the light of which all else is seen, the love within which all other love finds speech. This love is silent" T.S. Eliot, The Elder Statesman, 1958

Whereas, the family is the entity that nurtures the values which have made America great. The bonds of familial love are the foundation of our nation's strength; and

Whereas, the trust, duty, respect, and cooperation that are a way of life for family members are traits that reinforce the fabric and function of all societal units from the neighborhood to the nation. The acceptance of each individual family member's uniqueness, teamed with simultaneous, unified strides to improve gives momentum to our progress as a nation; and

Whereas, appropriately placed with the traditional week of Thanksgiving, National Family Week is a period of thanks for all the contributions the family has made to our country;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 18-24, 1991, as FAMILY WEEK in Illinois, in conjunction with the national observance.

Issued by the Governor January 16, 1992.

Filed with the Secretary of State January 23, 1992.

92-023
FLORENCE KNIGHT DAY

Whereas, Florence Knight played a vital role in the establishment of Wildwood Presbyterian Church, which was founded December 26, 1954; and

Whereas, Florence has faithfully served as an elder of the Wildwood Presbyterian Church of Wildwood Presbyterian Church for 35 years. In addition, she has served for 37 years as Clerk of Session, the only clerk the church has ever known; and

Whereas, during the 37-year period, Florence has served as spiritual leader of the congregation, confidant and advisor to pastors, friend and colleague in ministry to many, and committed disciple of Jesus Christ; and

Whereas, Florence has served her congregation and community with energy, intelligence, imagination, and love; and

Whereas, in addition to her service to the church and the community, she has been a devoted wife to husband Lou and a loving mother to sons Lance and Lincoln; and

Whereas, her dedication and zeal have contributed to the quality of the Wildwood community;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 26, 1992, as FLORENCE KNIGHT DAY in Illinois.

Issued by the Governor January 16, 1992.

Filed with the Secretary of State January 23, 1992.

92-024
FOUR CHAPLAINS SUNDAY

"Surely the astounding and beautiful fact about human existence is that transfiguring times may come to the commonest or simplest person, that suddenly some undistinguished,

negligible man or woman who never said or did anything notable before may be caught up in unaccountable glory and made a beacon for mankind." --St. John Ervine

Whereas, February 2, 1992, marks the 49th anniversary of "Four Chaplains Sunday," one of the most inspiring acts of heroism in World War II; and

Whereas, in a final act of love and dedication, four U.S. Army Chaplains representing the Methodist, Roman Catholic, Jewish, and Dutch Reformed faiths, gave their own life jackets, the only ones that remained, to four soldiers. The four chaplains then linked arms and prayed as they sank with the torpedoed U.S.S. Dorchester in the North Atlantic; and

Whereas, each year a memorial program is sponsored by the Combined Veterans Association of Illinois. This year it is hosted by the Marine Corps League;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 2, 1992, as FOUR CHAPLAINS SUNDAY in Illinois, in an effort to perpetuate the memory of these men who so convincingly demonstrated their boundless love for others.

Issued by the Governor January 17, 1992.

Filed with the Secretary of State January 23, 1992.

92-025

INTRAVENOUS NURSES DAY

Whereas, intravenous nurses comprise a significant segment of our state's health care professionals; and

Whereas, intravenous nurses are continually working to upgrade the quality of care given to our citizens; and

Whereas, intravenous nurses are expanding their professional health care role through increased education, research, and practice; and

Whereas, the Congress of the United States of America has declared January 25th as National Intravenous Nurses Day, in recognition of the specialty practice of intravenous nursing and the Intravenous Nurses Society;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 25, 1992, as INTRAVENOUS NURSES DAY in Illinois.

Issued by the Governor January 17, 1992.

Filed with the Secretary of State January 23, 1992.

92-026

DR. LOREN K. ROBINSON DAY

Whereas, on December 2, 1946, Dr. Loren K. Robinson joined the staff of the Department of Agriculture at Western Illinois State Teacher's College, which became Western Illinois University (WIU); and

Whereas, at WIU, Dr. Robinson was named the Department of

Agriculture's assistant professor in 1952, associate professor in 1963, and full professor in 1968. He served as the department's acting chairman in 1968-69 and chairman from 1974-77; and

Whereas, from 1969 until his retirement, he served as the university's section leader of animal science. In addition, he was instrumental in implementation of the Swine Testing and Beef Evaluation Stations at the university farm; and

Whereas, Dr. Robinson helped spearhead the efforts to establish the Alpha Tau Chapter of the Alpha Gamma Rho Fraternity at Western Illinois University. The chapter was officially initiated in February 1963; and

Whereas, Dr. Robinson still serves as an advisor and a member of the fraternity's Alumni Board of Control; and

Whereas, a special ceremony will be held February 8, 1992, to pay tribute to Dr. Robinson for the dedication he has shown to Alpha Gamma Rho over the past 30 years;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 8, 1992, as DR. LOREN K. ROBINSON DAY in Illinois and commend Dr. Robinson on his many accomplishments and the commitment he has shown in the field of agricultural education.

Issued by the Governor January 21, 1992.

Filed with the Secretary of State January 23, 1992.

92-027

INDUSTRIAL ENGINEERS DAY

Whereas, industrial engineering is one of the recognized branches of engineering science, along with mechanical, civil, electrical, and chemical engineering; and

Whereas, industrial engineers use their problem-solving abilities in dealing with machines and people in an industrial environment; and

Whereas, founded in 1948, the Institute of Industrial Engineers (IIE) is an international organization with 41,000 members, about 1,700 of which live and work in our state; and

Whereas, the IIE will hold its 1992 International Industrial Engineering Conference in Chicago in May. The conference is expected to draw nearly 2,500 engineers from around the world;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim May 17, 1992, as INDUSTRIAL ENGINEERS DAY in Illinois.

Issued by the Governor January 21, 1992.

Filed with the Secretary of State January 23, 1992.

92-028

LAND SURVEYORS' MONTH

Whereas, land surveying is one of the oldest technical services of mankind. Our complex civilization depends more and more on surveyors' accuracy and skills to determine property

rights and methods of design and construction; and

Whereas, the surveying skills of George Washington, the Commander-in-Chief of our Revolutionary Forces, may have had considerable influence on the winning of our national independence since Washington, a land surveyor before the war, directed the planning of military operations and selected the battle sites; and

Whereas, more than 80 years later when the states were threatened by a cruel division, another great president and former surveyor, Abraham Lincoln, was recognized as the "Savior of Our Country" after directing the campaigns that preserved our nation;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 1992 as LAND SURVEYORS' MONTH in Illinois, in recognition of the two "Land Surveyor Presidents," George Washington and Abraham Lincoln, whose birthdays are observed this month.

Issued by the Governor January 21, 1992.

Filed with the Secretary of State January 23, 1992.

92-029

SCHOOL PSYCHOLOGISTS ASSOCIATION WEEK

Whereas, for more than 40 years, Illinois has been recognized as a leader in providing school programs and services for children with physical, mental, emotional, or educational problems; and

Whereas, Illinois school psychologists have demonstrated their concern for children's rights to free and appropriate public education tailored to their individual capabilities; and

Whereas, the school psychology profession and the Illinois School Psychologists Association have dedicated their efforts to serving the mental health and educational needs of all children;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 17-21, 1992, as SCHOOL PSYCHOLOGISTS ASSOCIATION WEEK in Illinois and commend the school psychology professionals on their dedication to the health and well-being of our students.

Issued by the Governor January 21, 1992.

Filed with the Secretary of State January 23, 1992.

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JCAR - Joint Committee on Administrative Rules

ACTION CODES

A - Adopted Rule
AR - Adopted Repealer
C - Notice of Corrections
CC - Codification Changes
E - Emergency Rule
ER - Emergency Repealer
M - Modification to meet JCAR objections
O - JCAR Statement of Objections
P - Proposed Rule
PF - Prohibited Filing Ordered by JCAR
PP - Peremptory or Court ordered Rules
PR - Proposed Repealer
R - Refusal to meet JCAR objection
RC - Statement of Recommendation
S - Suspension ordered by JCAR
W - Withdrawal to meet JCAR objections

EXAMPLE:

AGRICULTURE, DEPARTMENT OF

8 Ill. Adm. Code 285 Ill. Grain Insurance Act (P-18048/85; A-6818)
TITLE PART ACTION CODE PAGE NUMBER PREVIOUS VOLUME ACTION CODE
PAGE NUMBER

ALL RULES ARE LISTED BY PART NUMBER AND HEADING ONLY. (FOR ACTION ON SPECIFIC SECTIONS, PLEASE REFER TO THE SECTIONS AFFECTED INDEX.) IF THERE ARE ANY QUESTIONS, PLEASE CONTACT THE ADMINISTRATIVE CODE DIVISION AT (212) 782-9786.

AGING, DEPARTMENT ON

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